

Appointment

From: Creech, Christopher [Creech.Christopher@epa.gov]
Sent: 10/18/2018 9:05:07 PM
To: Creech, Christopher [Creech.Christopher@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: Policy and Procedure Memo Review
Attachments: DRAFT MEMO Policy and Procedure Update 10.18.2018.docx
Location: Larry's Office

Start: 10/19/2018 6:00:00 PM
End: 10/19/2018 6:30:00 PM
Show Time As: Busy

I was able to walk Denise through it sight unseen in 30 minutes if you didn't have time to fully review it before the meeting. We could also push back to Monday if needed.

Appointment

From: Creech, Christopher [Creech.Christopher@epa.gov]
Sent: 1/31/2019 5:35:52 PM
To: Creech, Christopher [Creech.Christopher@epa.gov]; Neal, Kerry [neal.kerry@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
Subject: FOIA Regs Preamble Review
Attachments: PREAMBLE_Phase I Preamble Redlining.docx
Location: NFO Conference Room
Start: 2/1/2019 7:00:00 PM
End: 2/1/2019 8:00:00 PM
Show Time As: Busy

Attached is a redlined version. I will make a clean version for everyone tomorrow morning, as well.

Hello All,

I wanted to take some time tomorrow to review my redlining of the FOIA Regs Preamble. I hope to have a draft ready for you by COB. The preamble is an adjustment to Dan's original draft and shouldn't require substantial changes. As a reminder, our current timeline has a draft of the regs going to GLO and NFO for review next week.

Thank you and please let me know if another date or time works better for you.

Best,
Chris

Message

From: Creech, Christopher [Creech.Christopher@epa.gov]
Sent: 2/15/2019 5:33:16 PM
To: Veney, Carla [Veney.Carla@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]
CC: Maher, Lauren [Maher.Lauren@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Hi Carla,

If it's not too late. This list below adds to Larry's list that he sent you in a separate email.

Calderon.Wanda@epa.gov
Farren.Victor@epa.gov
Zipf.Lynn@epa.gov
Fields.Wanda@epa.gov
Lemley.Lauren@epa.gov
Kennedy.Chandra@epa.gov
Godfrey.Carlene@epa.gov
Berkley.Bruce@epa.gov
Robinson.Milton@epa.gov
Blake.Wendy@epa.gov
Farrell.Ericka@epa.gov
Miller.Kevin@epa.gov
Peterson.Samuel@epa.gov
Hanger.Eric@epa.gov
Cunningham.Dennis@epa.gov
Lee.Pascale@epa.gov
Clausen.Rebecca@epa.gov
Heckman.Deborah@epa.gov
London.Bernadine@epa.gov
Smith.Susan@epa.gov
Lao.Judy@epa.gov
kluesner.dave@epa.gov
Mears.Mary@epa.gov
Story.Karen@epa.gov
Gross.LouAnn@epa.gov
Woodard-Burrell.Gwendolyn@epa.gov
Gupta.Kaushal@epa.gov
Kersey.Ricky@epa.gov
Langley.Shirley@epa.gov
Price.Lisa@epa.gov
duran.matt@epa.gov
Rivera.Adrienne@epa.gov

Henderson.Alita@epa.gov

Haas.Susan@epa.gov

Aarons.Kyle@epa.gov

Christopher T. Creech
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E

From: Veney, Carla
Sent: Friday, February 15, 2019 12:06 PM
To: Creech, Christopher <Creech.Christopher@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Ok, thanks! I think he wants to send during his lunch hour.

From: Creech, Christopher
Sent: Friday, February 15, 2019 12:01 PM
To: Veney, Carla <Veney.Carla@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Hi Carla,

I should have an updated list of FOIA Officers and Coordinators emails shortly. I don't think the mailing lists for those groups is up-to-date either.

Thanks,

Christopher T. Creech
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E

From: Veney, Carla
Sent: Friday, February 15, 2019 11:26 AM
To: Epp, Timothy <Epp.Timothy@epa.gov>; Creech, Christopher <Creech.Christopher@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Matt said he will send the email out himself. I'm planning to give him individual names of the folks on the list. He thinks some of these lists in outlook may be out of date. Could you provide the names in the FOIA coordinators and FOIA officers lists? Unless you know of the actual group name for these folks that's current, please send me that. Thank you.

From: Epp, Timothy
Sent: Friday, February 15, 2019 8:49 AM
To: Veney, Carla <Veney.Carla@epa.gov>; Creech, Christopher <Creech.Christopher@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Thanks Carla – we also provided Matt text that he could use in a cover email with the assumption that Matt would want to send it out from his email box.

The email list would be: Associate and Assistant Administrators and their deputies, RAs and DRAs, RCs and DRCs, and FOIA Officers and FOIA coordinators (as well as myself and the NFO)

Can you check whether he wants to do that – or get alternative instructions from him as to whether I should send it out?

Thanks,
Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

From: Veney, Carla
Sent: Friday, February 15, 2019 8:45 AM
To: Creech, Christopher <Creech.Christopher@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Matt signed the memo this morning. Do you want me to bring it up to you?

From: Creech, Christopher
Sent: Thursday, February 14, 2019 5:13 PM
To: Veney, Carla <Veney.Carla@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Thank you, Carla! We greatly appreciate your help!

Best,

Christopher T. Creech
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
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Room 7353 E

From: Veney, Carla
Sent: Thursday, February 14, 2019 2:36 PM
To: Creech, Christopher <Creech.Christopher@epa.gov>
Cc: Maher, Lauren <Maher.Lauren@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Hi Chris, the letter is in Matt's action box in his office. I just wanted you to know I received your message and printed off everything.

From: Creech, Christopher
Sent: Wednesday, February 13, 2019 6:57 PM
To: Maher, Lauren <Maher.Lauren@epa.gov>
Cc: Epp, Timothy <Epp.Timothy@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Miller, Tia <Miller.Tia@epa.gov>; Patrick, Monique <Patrick.Monique@epa.gov>; Shaffer, Patricia <Shaffer.Patricia@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Hello Lauren,

The memo references three attachments, those records are attached here. They should be included in Matt's communication alongside the memo itself. I apologize for not including them originally.

I also uploaded them to CTS (Joe, I apologize for more email pings).

Best,

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Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E

From: Creech, Christopher
Sent: Tuesday, February 12, 2019 5:43 PM
To: Maher, Lauren <Maher.Lauren@epa.gov>; Miller, Tia <Miller.Tia@epa.gov>; Patrick, Monique <Patrick.Monique@epa.gov>; Shaffer, Patricia <Shaffer.Patricia@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Veney, Carla <Veney.Carla@epa.gov>
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Creech.Christopher@EPA.gov



Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 2/15/2019 5:07:21 PM
To: Veney, Carla [Veney.Carla@epa.gov]; Creech, Christopher [Creech.Christopher@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
CC: Maher, Lauren [Maher.Lauren@epa.gov]
Subject: RE: GC Signature Request, NFO, FOIA Policy and Procedures Update

Thanks Chris – copying Larry because he is working on it as well.

Timothy R. Epp
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Best,

Christopher T. Creech
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E
Creech.Christopher@EPA.gov



Message

From: Calderon, Wanda [Calderon.Wanda@epa.gov]
Sent: 2/27/2019 2:48:29 PM
To: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: FW: For review: FOIA Standard Functions document
Attachments: FOIA Functional Statement 2.13.19clean.docx

Wanda Calderon
Government Information Specialist
Public Outreach Branch
US EPA Region 2
www.epa.gov/foia

From: Simon, Paul
Sent: Tuesday, February 26, 2019 6:30 PM
To: Calderon, Wanda <Calderon.Wanda@epa.gov>; Cohen, Mitchell <cohen.mitchell@epa.gov>
Cc: Feinmark, Phyllis <Feinmark.Phyllis@epa.gov>; Kluesner, Dave <kluesner.dave@epa.gov>; Ferrara, Helen <Ferrara.Helen@epa.gov>
Subject: FW: For review: FOIA Standard Functions document

Hi, Wanda and Mitch. In anticipation of the Regional FOIA Program moving to ORC in each Region, OGC put together the attached document "to ensure that there is a base level of adequate and consistent staff and structure for regional FOIA offices in ORC from the outset." They sent a draft of it to the Regional Counsels' offices for comment on a very quick turnaround. See below and attached. I just sent OGC comments a few minutes ago, which I will forward to you in a separate email.

Could you please read the document and my comments on it? Then, I'd like to talk with you about it. If you identify problems that I didn't flag in my markup, let me know; I can always send OGC supplemental comments if appropriate.... although I think they want to finalize the document very soon.

BTW, Wanda, can you pls remind me?: Are you required to upload to FOIAOnline even documents we are withholding in response to a FOIA, and those docs. are coded in some way in FOIAOnline such that the requester can't see them?

From: Cozad, David
Sent: Tuesday, February 19, 2019 1:44 PM
To: OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Epp, Timothy <Epp.Timothy@epa.gov>
Subject: For review: FOIA Standard Functions document

Hello RCs and DRCs -

Attached for your review and comment, as I mentioned on last week's OGC-RC VTC, is a draft "Standard Functions" document for regional FOIA programs. The intent of this document is to guide management in structuring and staffing the regional FOIA operations as they move to ORC. It will be issued by Matt Leopold, as the Agency's Chief FOIA Officer. The draft was put together by a workgroup led by Tim Epp and Neil Bigioni, with participants from Regions 1, 8, 9, and 10.

The primary purpose of the document is to ensure that there is a base level of adequate and consistent staff and structure for regional FOIA offices in ORC from the outset. The document makes it clear that:

- The regional FOIA offices are expected to have a manager in ORC who devotes significant time to FOIA and is clearly responsible/accountable for the overall program
- There is a designated Regional FOIA Officer (who could also be the FOIA manager) who is responsible for intake, assignment, and tracking of requests
- Regional FOIA offices are expected to have sufficient support staff dedicated to FOIA, who manage individual requests from assignment to closure
- Regions have IT support clearly dedicated to FOIA
- Offices in regions outside ORC still have significant responsibilities in staff collection and review of documents, and management review of responses; the manager of the staff to which the request is assigned outside of the ORC, or other designated manager, will review and concur on the response
- Beyond document collection and review, most FOIA functions are expected to be performed in the regional FOIA office within ORC – so things such as contact with the requestor to discuss fees and scope, qa/qc of response, decisions on exemptions, etc., are generally expected to be done in ORC.

I think this document can help ensure that regions provide sufficient resources to the ORCs as they stand up their FOIA offices. It will also establish a common structure across the country for regional FOIA offices, while still allowing for the flexibility that is needed based on regional differences in office size and FOIA volume.

This document does not replace the regional FOIA SOPs that provide the region-specific procedures for day-to-day implementation of FOIA responsibilities; it works in tandem with those region-specific SOPs. Most of those SOPs were put in place in 2015, and the regions will all need to update their FOIA SOPs for a number of reasons: to reflect the reorganization; to reflect the new FOIA regulations the Agency is about to issue; and to reflect statutory changes in 2016.

We'd like your comments on this document by COB, Wednesday, February 27. To help you in your review, we will set up an initial call on Thursday, February 21, for Tim and Neil to walk you through the document and answer any questions you have. Watch for an invite.

It is important to finalize this document quickly, given the timelines for regional realignments.

Many thanks to the workgroup for putting this together –

Dave

Dave Cozad
Acting Deputy General Counsel
202-564-5434 (w)
816-835-1909 (c)

Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 11/13/2018 2:59:29 PM
To: OGC NFO [OGC-NFO@epa.gov]
Subject: Congratulations NFO Team!

FORT and FEAT –

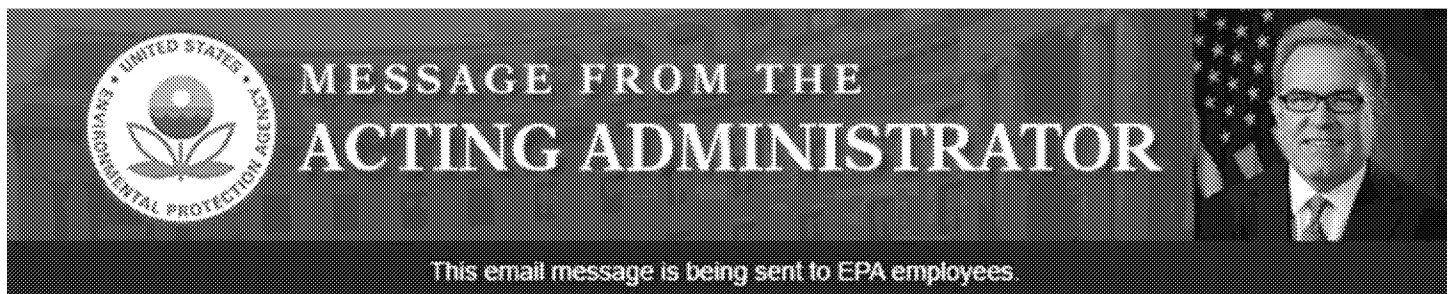
This email from Acting Administrator Wheeler is for you! What we do is critical to building trust with the American People. And, we have challenges ahead of us.

Thank you for your hard work over the past months on the seemingly endless requests to envision what we can do better, and to keep repackaging it in new ways. We are starting to get the building of excellence underway.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

From: Message from the Administrator
Sent: Tuesday, November 13, 2018 9:13 AM
To: Message from the Administrator <messagefromtheadministrator@epa.gov>
Subject: The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions



Colleagues,

Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations. The Freedom of Information Act (FOIA) is an important tool for promoting transparency and building public trust in agency actions. I reaffirm the Agency's commitment to operating in an open and transparent manner, and I encourage all Agency employees to join me to help improve the Agency's FOIA response efforts. The success of our efforts at the EPA directly depends on the trust of the public we serve.

Key Messages

- **Transparency:** The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness:** The EPA will improve the timeliness of our FOIA responses.

- **Quality:** The EPA will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process and appropriately redacted records.
- **Professionalism:** The EPA will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make the EPA a flagship example of transparent, efficient and effective government.

General Principles

Like all federal agencies, the EPA is subject to FOIA. FOIA encourages accountability through transparency, and pursuant to FOIA, any person has the right to access agency records, except where the information is protected from disclosure. The Agency is committed to conducting its business in an open and transparent manner. The Agency will work to ensure that its FOIA professionals have the support needed to satisfy FOIA's requirements in a timely and efficient a manner. The EPA should also strive, when possible, to proactively provide the public with access to information that is likely to be requested under FOIA to better assist the public to participate and engage with the Agency.

Because the EPA is a public regulatory agency, staff may come into possession of information that may need to be protected from disclosure under FOIA, including confidential business information, trade secrets, deliberative information, or personal privacy information. Although the Agency's business is to be conducted in an open, accountable manner, we must also ensure that sensitive information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. The EPA's FOIA Regulations are available here (<https://www.ecfr.gov>).

Important Steps Taken to Date

The Agency has taken several steps recently to improve its FOIA program. The Agency's FY 2018-2022 EPA Strategic Plan sets one of its Strategic Goals as increasing transparency and public participation. Measures for meeting this goal include eliminating the backlog of pending FOIA requests and meeting the requisite deadlines for responding to FOIA requests. As part of this improvement effort, in April of 2018, the Agency created the National FOIA Office within the Office of General Counsel and soon thereafter delegated to the General Counsel the Chief FOIA Officer functions. These functions include FOIA regulations and policy, public liaison and data-reporting, training, and assisting offices Agency-wide that are responsible for FOIA. The General Counsel also oversees legal counseling, FOIA appeals, and FOIA litigation as well as the FOIA Expert Assistance Team (FEAT), which was created in 2014 and has been very successful at efficiently managing the Agency's most complex FOIA issues. Additional FOIA professionals are being hired to increase the services the National FOIA Office provides.

To enhance accountability, the Agency recently announced a reorganization of the Regional Counsel Offices to provide clear authority and reporting lines for FOIA offices in the regions. FOIA accountability language is also being added to FOIA manager performance agreements Agency-wide.

At the same time, the Agency also launched a significant effort to tackle the large volume of FOIA requests within the Administrator's Office. This initiative (known as the AO4 project) included:

1. Centralizing the FOIA process for four sub-offices,
2. Engaging the FEAT from OGC to provide critical project management, legal guidance, and training,
3. Standing up a "Tiger Team" of 12 staff dedicated to FOIA review and processing, and
4. Hiring additional FOIA professionals.

So far, this effort has yielded significant results and continues to make deep inroads into the Administrator's Office's backlog. I want to thank all who helped with these efforts and with prior backlog reduction initiatives

in the program and regional offices. All Agency components should continue to tackle their FOIA backlog. I am directing the National FOIA Office to circulate monthly a report of the FOIA request backlog across EPA.

In addition, last fall, the EPA hosted a multi-day conference for over 180 of the Agency's FOIA professionals. The conference was the first of its kind in more than a decade. The training agenda tracked the life cycle of a FOIA and addressed legal issues encountered at all stages of FOIA processing. Last fall's conference represents the first of a two-phased training program. The second phase, described below, involves specialized FOIA training for supervisors.

In February 2018, the Agency also held a multi-day Lean event focused on FOIA. That event resulted in two pilot projects that the National FOIA Office has led in conjunction with the Office of Continuous Improvement (OCI) to identify bottlenecks and help streamline the FOIA response process.

Moving Forward to Improve the FOIA Process

The Agency's leadership intends to continue to take steps to improve its FOIA process this year. In addition, I encourage organizations responsible for FOIA to undertake their own projects to improve FOIA processing. These should include centralization of FOIA review and management functions in the organization, adding tracking identification numbers to all documents released through FOIA, hiring additional staff, and providing supplemental training using existing resources.

To meet the transparency and public participation Strategic Goal, the EPA must work to ensure that it is not only providing responses to FOIA requests in a timely manner, but also that those responses are of the highest quality. Programs and regions should continue implementing current EPA FOIA policy and procedures to help reduce errors in their responses. For instance, all organizations should continue to have at least two knowledgeable individuals, including one manager, review all documents before they are released to the public to improve accuracy and consistency in release determinations. See Freedom of Information Act Policy, CIO 2157.1 (September 20, 2014) (available at [https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL\(with-electronic-signature\).pdf](https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf)).

Further, the Agency should continue FOIA training for all staff. To that end, the Office of General Counsel is planning the second phase of the training program mentioned above. This second phase of the training program will include a training directed at supervisors, including Division Directors or the equivalent, responsible under the Agency's FOIA Policy for the review of FOIA responses. These training efforts and continued annual training of our FOIA professionals will help ensure that the Agency is responding effectively and efficiently to FOIA requests and utilizing fully available technological resources. Questions about whether FOIA exemptions apply to certain information or other questions about FOIA processing should be directed to the Office of General Counsel.

Federal Records Act Requirements

For the Agency to have an effective FOIA program, the Agency must also ensure that it has a robust Federal Records program. The Federal Records Act provides the foundation for transparency at the EPA. Under the Federal Records Act, employees must create and maintain records that document the persons, places, things, or matters dealt with by the agency and which facilitate action by agency officials and their successors in office. Proper records management protects the financial, legal, and other rights of the EPA and of persons directly affected by the EPA's actions, and permits adequate oversight of the Agency's work by Congress and the public. All employees must take care to document the formulation and execution of basic policies and decisions, and the taking of necessary actions. It is particularly important that all employees understand that the Federal Records Act requirements apply to oral communications. All substantive decisions and commitments reached orally should be documented. You can learn more about

the Federal Records Act at <http://intranet.epa.gov/records/>. Should you have any questions about your Federal Records Act obligations, you should contact the Records Help Desk by calling 202-566-1494 or emailing records@epa.gov.

Conclusion

The Agency is facing an unprecedented volume of FOIA requests. Despite this enormous challenge, the EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make the EPA a flagship example of transparent, efficient, and effective government.

Andrew Wheeler
Acting Administrator

Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 11/13/2018 2:48:19 PM
To: OGC NFO [OGC-NFO@epa.gov]
Subject: FW: Representing you
Attachments: EPA FOIA EMC presentation.pptx

Hi All,

I got some nice feedback already from Elise this morning at my one-on-one with her. Essentially, I asked her what I could say about our planned work on Regs, Policy, and process improvements without having yet had a briefing and express approval from Matt. She said that I should go ahead and put it in. Thus, I'm going to create a slide on the FORT, LEAN pilots, and opportunities.

I'm also going to cut the Gold King Mine slide – she said there is no need to tell the story for building FEAT's credibility.

Yeah! I'm relieved.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

From: Epp, Timothy
Sent: Tuesday, November 13, 2018 8:27 AM
To: OGC NFO <OGC-NFO@epa.gov>
Subject: Representing you

Hi all,

On Thursday morning, I have 30 minutes to speak about FOIA to the Agency's Executive Management Council – these are the DAAs and DRAs for the whole agency. Attached is the PowerPoint I plan to use. I'd welcome your comments, thoughts, suggested edits. Please send any to me by the end of the day.

My major theme is the story of increased FOIA requests in AO is driving FOIA improvement and reorganization across the Agency.

My minor theme is a story of increasing centralization to increase efficiency (timeliness), accountability, and quality.

The last two slides I have not built yet – overall, this is too long.

Thanks,

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

Awareness Notification Email Template

To Line: Elizabeth White, Director, OEX
Brian Hope, Deputy Director, OEX
Victoria Tran, Special Assistant, OEX
Timothy Epp, Director, National FOIA Office
Nancy Grantham, Principle Deputy Associate Administrator, OPA
Troy Lyons, Associate Administrator, OCIR
Robin H. Richardson, Principle Deputy Associate Administrator, OCIR
John Konkus, Deputy Associate Administrator, OPA
Denise Walker, Assistant Director, National FOIA Office
Larry Gottesman, Assistant Director, National FOIA Office

*[insert Action Office's Deputy Assistant Administrator or Deputy Regional Administrator]
[insert - individual assigned to the request in FOIAonline]*

Subject: Awareness Notification *[Include EPA FOIA ID here]* *[Identify general topic of FOIA]*

To whom it may concern,

[Identify the Action Office here] is responding to the above-referenced FOIA request(s). We are providing this awareness notification email pursuant to the Chief of Staff's November 16, 2018 memorandum "Awareness Notification Process for Select Freedom of Information Act Releases." Recipients of this email have up to three business days following transmission of this email to review the documents to be released.

There is no requirement for you to respond to this email or otherwise take action. The Action Office has completed review and obtained management approval consistent with the agency's FOIA policy and procedures.

After 4 p.m. on the third business day after transmission of this email, the Action Office will issue the Agency's FOIA determination to the requester(s). The determination will be issued promptly, but in no event later than one business day following completion of the three-day awareness notification period.

The information provided below is consistent with Paragraph 4 of the above-referenced November 16, 2018 memorandum.

[Action Office]							
FOIA ID	Requester	Requester Organization	Date FOIA Request Perfected	Date sent for Awareness Notification	Brief description of request as clarified	Interim or Final Response	Number of Records and/or pages
<i>EPA-HQ-2019-00xxx</i>	<i>Jane Q. Public</i>	<i>News Group</i>	<i>11/10/2018</i>	<i>11/17/2018</i>	<i>Documents seeking records about X.</i>	<i>Interim response</i>	<i>10 records</i>

The following offices have equities in these records and have reviewed the relevant records:

Office 1
Office 2
Office 3

The manager who approved this release is: _____

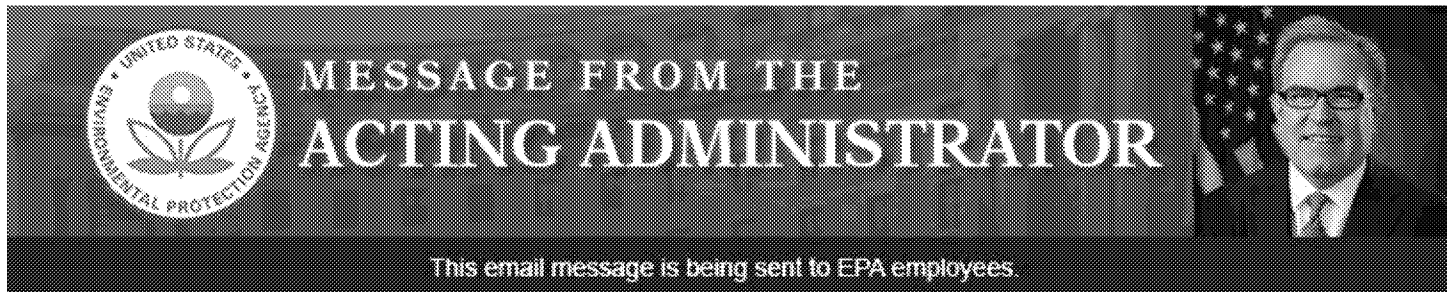
The records are:

___ attached

___ may be found at the following link: *[Insert link]*

Message

From: Message from the Administrator [messagefromtheadadministrator@epa.gov]
Sent: 7/12/2018 2:54:44 PM
To: Message from the Administrator [messagefromtheadadministrator@epa.gov]
Subject: EPA's Commitment to Transparency



Colleagues,

Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations. The Freedom of Information Act (FOIA) is an important tool for promoting transparency and building public trust in agency actions. I reaffirm the Agency's commitment to operating in an open and transparent manner, and I encourage all Agency employees to join me to help improve the Agency's FOIA response efforts. The success of our efforts at the EPA directly depends on the trust of the public we serve.

Key Messages

- **Transparency:** The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness:** The EPA will improve the timeliness of our FOIA responses.
- **Quality:** The EPA will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process and appropriately redacted records.
- **Professionalism:** The EPA will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make the EPA a flagship example of transparent, efficient and effective government.

General Principles

Like all federal agencies, the EPA is subject to FOIA. FOIA encourages accountability through transparency, and pursuant to FOIA, any person has the right to access agency records, except where the information is protected from disclosure. The Agency is committed to conducting its business in an open and transparent manner. The Agency will work to ensure that its FOIA professionals have the support needed to satisfy FOIA's requirements in a timely and efficient a manner. The EPA should also strive, when possible, to proactively provide the public with access to information that is likely to be requested under FOIA to better assist the public to participate and engage with the Agency.

Because the EPA is a public regulatory agency, staff may come into possession of information that may need to be protected from disclosure under FOIA, including confidential business information, trade secrets, deliberative information, or personal privacy information. Although the Agency's business is to be conducted in an open, accountable manner, we must also ensure that sensitive information entitled to special protection

is handled with the utmost care and in full compliance with all applicable laws and regulations. The EPA's FOIA Regulations are available [here](https://www.ecfr.gov) (<https://www.ecfr.gov>).

Important Steps Taken to Date

The Agency has taken several steps recently to improve its FOIA program. The Agency's FY 2018-2022 EPA Strategic Plan sets one of its Strategic Goals as increasing transparency and public participation. Measures for meeting this goal include eliminating the backlog of pending FOIA requests and meeting the requisite deadlines for responding to FOIA requests. As part of this improvement effort, in April of 2018, the Agency created the National FOIA Office within the Office of General Counsel and soon thereafter delegated to the General Counsel the Chief FOIA Officer functions. These functions include FOIA regulations and policy, public liaison and data-reporting, training, and assisting offices Agency-wide that are responsible for FOIA. The General Counsel also oversees legal counseling, FOIA appeals, and FOIA litigation as well as the FOIA Expert Assistance Team (FEAT), which was created in 2014 and has been very successful at efficiently managing the Agency's most complex FOIA issues. Additional FOIA professionals are being hired to increase the services the National FOIA Office provides.

To enhance accountability, the Agency recently announced a reorganization of the Regional Counsel Offices to provide clear authority and reporting lines for FOIA offices in the regions. FOIA accountability language is also being added to FOIA manager performance agreements Agency-wide.

At the same time, the Agency also launched a significant effort to tackle the large volume of FOIA requests within the Administrator's Office. This initiative (known as the AO4 project) included:

1. Centralizing the FOIA process for four sub-offices,
2. Engaging the FEAT from OGC to provide critical project management, legal guidance, and training,
3. Standing up a "Tiger Team" of 12 staff dedicated to FOIA review and processing, and
4. Hiring additional FOIA professionals.

So far, this effort has yielded significant results and continues to make deep inroads into the Administrator's Office's backlog. I want to thank all who helped with these efforts and with prior backlog reduction initiatives in the program and regional offices. All Agency components should continue to tackle their FOIA backlog. I am directing the National FOIA Office to circulate monthly a report of the FOIA request backlog across EPA.

In addition, last fall, the EPA hosted a multi-day conference for over 180 of the Agency's FOIA professionals. The conference was the first of its kind in more than a decade. The training agenda tracked the life cycle of a FOIA and addressed legal issues encountered at all stages of FOIA processing. Last fall's conference represents the first of a two-phased training program. The second phase, described below, involves specialized FOIA training for supervisors.

In February 2018, the Agency also held a multi-day Lean event focused on FOIA. That event resulted in two pilot projects that the National FOIA Office has led in conjunction with the Office of Continuous Improvement (OCI) to identify bottlenecks and help streamline the FOIA response process.

Moving Forward to Improve the FOIA Process

The Agency's leadership intends to continue to take steps to improve its FOIA process this year. In addition, I encourage organizations responsible for FOIA to undertake their own projects to improve FOIA processing. These should include centralization of FOIA review and management functions in the organization, adding tracking identification numbers to all documents released through FOIA, hiring additional staff, and providing supplemental training using existing resources.

To meet the transparency and public participation Strategic Goal, the EPA must work to ensure that it is not only providing responses to FOIA requests in a timely manner, but also that those responses are of the highest quality. Programs and regions should continue implementing current EPA FOIA policy and procedures to help reduce errors in their responses. For instance, all organizations should continue to have at least two knowledgeable individuals, including one manager, review all documents before they are released to the public to improve accuracy and consistency in release determinations. See Freedom of Information Act Policy, CIO 2157.1 (September 20, 2014) (available at [https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL\(with-electronic-signature\).pdf](https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf)).

Further, the Agency should continue FOIA training for all staff. To that end, the Office of General Counsel is planning the second phase of the training program mentioned above. This second phase of the training program will include a training directed at supervisors, including Division Directors or the equivalent, responsible under the Agency's FOIA Policy for the review of FOIA responses. These training efforts and continued annual training of our FOIA professionals will help ensure that the Agency is responding effectively and efficiently to FOIA requests and utilizing fully available technological resources. Questions about whether FOIA exemptions apply to certain information or other questions about FOIA processing should be directed to the Office of General Counsel.

Federal Records Act Requirements

For the Agency to have an effective FOIA program, the Agency must also ensure that it has a robust Federal Records program. The Federal Records Act provides the foundation for transparency at the EPA. Under the Federal Records Act, employees must create and maintain records that document the persons, places, things, or matters dealt with by the agency and which facilitate action by agency officials and their successors in office. Proper records management protects the financial, legal, and other rights of the EPA and of persons directly affected by the EPA's actions, and permits adequate oversight of the Agency's work by Congress and the public. All employees must take care to document the formulation and execution of basic policies and decisions, and the taking of necessary actions. It is particularly important that all employees understand that the Federal Records Act requirements apply to oral communications. All substantive decisions and commitments reached orally should be documented. You can learn more about the Federal Records Act at <http://intranet.epa.gov/records/>. Should you have any questions about your Federal Records Act obligations, you should contact the Records Help Desk by calling 202-566-1494 or emailing records@epa.gov.

Conclusion

The Agency is facing an unprecedented volume of FOIA requests. Despite this enormous challenge, the EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make the EPA a flagship example of transparent, efficient, and effective government.

Andrew Wheeler
Acting Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 12 2017

OFFICE OF
ENVIRONMENTAL INFORMATION

The Honorable Michael F. Bennet
United States Senate
Washington, D.C. 20510

Dear Senator Bennet:

Thank you for your letter addressed to Kevin Minoli, Acting General Counsel, dated March 15, 2017, regarding the EPA's implementation of the Freedom of Information Act (FOIA), and the new requirements resulting from the FOIA Improvement Act of 2016 (Act). As my office is responsible for EPA's FOIA program, I have been asked to respond on behalf of the Agency.

EPA receives an average of 10,500 FOIA requests from the public each year. The Agency has experienced an increase in the number and complexity of FOIA requests received so far in FY 2017. Based on the current rate of incoming FOIA requests in FY 2017, as compared to FY 2016, EPA is on track to receive approximately 10 percent more requests.

The Agency has taken a number of steps over the last few years to ensure the efficient management of FOIA responses. In 2012, the EPA played a key role in the development of FOIAonline, which is a shared-service FOIA processing and management tool used by multiple agencies, including the EPA, to manage FOIA responses. The EPA uses the system to track the processing of requests, to communicate with requesters regarding their requests, and to publicly post all documents appropriate for release to the public for anyone to access. Through its use of FOIAonline, the EPA has met the Act's codification of the "Rule of Three," which requires that documents that have been requested three or more times be available for public inspection. Since deployment of FOIAonline on October 1, 2012, the Agency has made approximately 831,405 records publicly available. In late 2014, the EPA established the FOIA Expert Assistance Team Office to assist Agency program and regional offices in responding to some of the largest and most complex FOIA requests received by the Agency. The Agency released hundreds of thousands of records to the public pursuant to FOIA in FY 2016.

At the EPA, FOIA is every employee's responsibility. The National FOIA Program located in EPA Headquarters supports FOIA staff in both headquarters and in each of the EPA's ten regional offices. The EPA has also created National FOIA Procedures for processing requests at the Agency, and each EPA program and regional office has created conforming procedures. Annual FOIA training is provided to all Agency employees, enabling all staff to play a critical role in processing FOIA requests. Through annual FOIA training, staff have been, and continue to be, instructed to apply the "foreseeable harm" standard now codified by the Act. The Agency has also been making strides in reducing its backlogs and successfully closed nine of the ten oldest FOIA requests and all ten of the Agency's ten-oldest appeals in FY 2016.

Internet Address (URL) • <http://www.epa.gov>

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After the Act was passed, the EPA took steps to implement the new requirements of the Act. The EPA includes language in all final FOIA responses that reflects the requirement that requesters now have 90 days to file an administrative appeal, as opposed to 30 days, and that requesters can obtain assistance from the FOIA Public Liaison and the Office of Government Information Services. The EPA also has discussed the requirements of the Act at monthly meetings of FOIA professionals across the Agency. The Agency's FY 2017 FOIA training, which is mandatory for all employees, includes a section that discusses the key components of the Act.

Finally, members of my staff are working with the EPA's Office of General Counsel to develop proposed revisions to the EPA's FOIA regulations. We also plan to update the Agency's National FOIA Procedures to reflect the final regulations which will address, among other things, the requirements of the 2016 amendments to FOIA. The National FOIA Office and the Office of General Counsel are also planning a national FOIA training conference for EPA FOIA staff and attorneys in September 2017.

Detailed information regarding the number of incoming requests, backlog, and estimated costs relating to FOIA can be found in EPA's FOIA Annual Reports submitted annually to the Department of Justice. Reports dating back to 2007 are available at <https://www.epa.gov/foia/foia-reports#annual>. Since the FY 2018 budget has not yet been passed, it is premature to comment on FY 2018 funding or staffing at this time.

Again, thank you for your letter. If you have any additional questions, please contact me or your staff may contact Kyle Aarons in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638 or Aarons.Kyle@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Steven Fine".

Steven Fine, Ph.D.
Acting Assistant Administrator
and Acting Chief Information Officer

Foreseeable Harm Standard

Applying the "Foreseeable Harm" Standard

After taking all of these openness principles into account, there still will be records and portions of records for which protection will remain entirely appropriate. As the Attorney General recognized in his Guidelines, "the disclosure obligation under the FOIA is not absolute." Congress included exemptions from mandatory disclosure to protect against different harms, such as, for example, harm to national security, harm to personal privacy, and harm to law enforcement interests.

Under the Attorney General's Guidelines, before withholding a record, the agency must reasonably foresee that disclosure would harm an interest protected by one of the exemptions. Thus, FOIA professionals should examine individual records with an eye toward determining whether there is foreseeable harm from release of that particular record, or portion thereof. Each record should be reviewed by agencies for its content, and the actual impact of disclosure for that particular record, rather than simply looking at the type of document or the type of file the record is located in.

Thus, for example, a requested record might be a draft, or a memorandum containing a recommendation. Such records might be properly withheld under Exemption 5, but that should not be the end of the review. Rather, the content of that particular draft and that particular memorandum should be reviewed and a determination made as to whether the agency reasonably foresees that disclosing that particular document, given its age, content, and character, would harm an interest protected by Exemption 5. In making these determinations, agencies should keep in mind that mere "speculative or abstract fears" are not a sufficient basis for withholding. Instead, the agency must reasonably foresee that disclosure would cause harm. Moreover, agencies must be mindful of the President's directive that in the face of doubt, openness prevails.

Creating a "New Era of Open Government"

FY17 FOIA Awareness Training

Alternative Text Version

Asset Title: FY17 FOIA Awareness Training

Asset ID: epa/_s24_epa_foia_training_2017

URL:

https://epa.skillport.com/skillportfe/main.action?path=summary/CUSTOMER_DEFINED/_s24_epa_foia_training_2017

FY17 FOIA Awareness Training

Alternative Text Version

NOTE: This alternative text version is intended for employees with disabilities that use Assistive Technology. Since completion of text version cannot be automatically tracked, please notify your supervisor once you have read and understood the course, to ensure that you receive proper credit for completing the training.

FY17 FOIA Awareness Training

Welcome to the EPA's Freedom of Information Act Training course for fiscal year 2017.

Overview

This training will provide you with:

- A general understanding of the Freedom of Information Act, or "FOIA";
- Information about the FOIA Improvement Act of 2016; and
- FOIA points of contact.

What Is The Freedom of Information Act?

- The FOIA is a law that gives any person the right to access information from over 100 federal agencies. To read the FOIA Statute, signed in 1966, visit the [FOIA resources page](#) on the Department of Justice's (or DOJ's) website.
- This right is enforceable by law. To read the court decisions, visit the DOJ's [Court Decisions Overview page](#).
- The FOIA only applies to Executive Branch agencies.
- Under the FOIA, agencies only produce records. Agency staff do not respond to questions.
- For other guidance from the DOJ's Office of Information Policy, visit the [OIP Guidance page](#).

EPA Policy and Procedures

- EPA's National FOIA Program provides overall FOIA policy, procedures, and guidance.
- To learn more about EPA FOIA Policy, view the PDF on [epa.gov's FOIA Policy page](#).
- To view EPA's National FOIA Procedures, view the PDF on the [Procedures for Responding to FOIA Requests page](#).
- Each Headquarters Program and Regional Office also has a set of Procedures. Contact your Headquarters FOIA Coordinator or Regional FOIA Officer for a copy.

What Is A Record Under FOIA?

- Under the FOIA, a record is defined as information in an agency's possession and control in any format including electronic format. The DOJ notes that for FOIA purposes, the term "records" includes all tangible documentations of information, regardless of whether they are records under the Federal Records Act, found in Title 44 of the U.S. Code, Section 3301.
- The definition of a record under FOIA is broader than the definition used by the EPA National Records Management Program.
- Agency employees responding to a FOIA request must keep records in accordance with EPA Records Schedules. FOIAonline is considered an official record keeping system.

Searching for Records

- If asked to search for records, you may need to look in a variety of locations. Responsive records may be located in:
 - Emails;
 - Filing cabinets (for hard copy records);
 - Personal and share drives;
 - SharePoint sites;
 - Records sent to off-site storage;
 - EZ Records and/or the Enterprise Content Management System, or ECMS; and
 - Mobile phones (for text messages and/or pictures).
- Except in limited circumstances to be discussed with your FOIA Officer or Coordinator and/or FOIA attorney, searches for Microsoft Outlook email messages should be performed by the Agency's centralized Discovery Services within the Office of Environmental Information (or OEI).
- Each office has a Search Point of Contact, called a "SPOC," who will submit the search request to OEI's Discovery Services on your behalf. The list of SPOCs is available on the EPA Intranet site.

Time Limits

- At EPA, FOIA is everyone's responsibility. For most EPA employees, their role in processing requests will be searching and reviewing documents to determine if the documents are potentially responsive to the FOIA request.
- By law, FOIA requests must be processed within specific time frames. These are:
 - 20 working days to respond to the requester, and
 - 10 additional working days if "unusual circumstances" exist, as described in the FOIA.

FOIA Requesters and Requests

- A Requester can be any individual (including non-U.S. citizens); a corporation or association; a public interest group; or a state, local, tribal, or foreign government. Requests may also be submitted by the Government Accountability Office or a member of Congress.
- Requests must be submitted in writing. Most requests are submitted through a Web-based system called [FOIAonline](#).
- Requesters may be contacted by Agency staff to clarify the request.
- Requesters will receive the final Agency response that has been prepared by staff and signed by a Division Director or equivalent.
- If the requester is dissatisfied with the Agency's response, he or she may file an administrative appeal.
- If EPA fails to respond to a request, the requester can file a lawsuit without having to file an administrative appeal.

FOIA Exemptions

- Like all agencies subject to the FOIA, EPA applies a presumption of openness when responding to FOIA requests.
- When the Agency withholds information, the records must fall under at least one of nine exemptions. For the list of all nine exemptions, visit [EPA's Learn about FOIA page](#).
- Some of the most widely used exemptions deal with draft documents (b)(5); attorney-client privilege (b)(5); confidential business information (b)(4); and protecting personal information (b)(6). There is also an exemption if the information is protected from disclosure by another statute (b)(3).

The FOIA Improvement Act of 2016

- On June 30, 2016, the President signed the FOIA Improvement Act of 2016, which changed several provisions in the FOIA. The key changes relate to:
 - Final response letters;
 - Requirements for obtaining an additional 10 days to respond;
 - A Foreseeable Harm statement;
 - Non-exempt information;
 - Search fees; and
 - A time limit for claiming the deliberative process privilege.
- Visit the DOJ's [OIP Summary of the FOIA Improvement Act of 2016 page](#) for summary of the Amendments.

Final Response Letters

- Final response letters:
 - Include a list of any FOIA exemptions applied and the basis for withholding any information, along with instructions on filing an appeal when records are withheld.
 - The released records, if any, are usually made available through FOIAonline.
- A final response letter must now:
 - Increase the number of days from 30 to 90 for the requester to appeal a final response;
 - Inform the requester of his or her right to seek assistance from the Agency's FOIA Public Liaison; and
 - Tell the requester that the Agency's FOIA Public Liaison or the Office of Government Information Services (part of the National Archives and Records Administration) can provide dispute resolution services.
 - Sample letter can be found on the intranet's [FOIA page](#).

Coordinating Multi-Office Responses

- EPA's FOIA Procedures state that there is a "Lead Office" to coordinate the search and response.
- Other offices are called "Contributing Office(s)."
- Coordination among EPA offices is important in providing a timely response.
 - The Lead Office and all Contributing Offices must work closely together to develop the response.
 - In general, the National FOIA Program is not involved in coordination between the Lead Office and any Contributing Offices.

Additional 10 Working Days

- The FOIA says that an agency may take an additional 10 working days to respond to a FOIA request when there are "unusual circumstances."
- "Unusual circumstances" are defined by the FOIA as situations when there is a need:
 - to search for and collect records from field offices, or other establishments;
 - to search for, collect, and examine a voluminous amount of records; or
 - for consultations with another agency or among two or more components within the same agency.
- If the agency cannot respond to the request within the extended period, then it must notify the requester in a timely manner that he or she has the right to seek dispute resolution services from the Office of Government Information Services.

Foreseeable Harm Standard

- Under the FOIA Improvement Act of 2016, it is only possible to withhold information when:
 - There is a foreseeable harm and an exemption applies; or
 - The information cannot be released by law.

25-Year Limit on Deliberative Process Privilege (Exemption 5)

- When a record is at least 25 years old, it is no longer protected under the Deliberative Process Privilege.
- Exemption 5 also covers Attorney-Client or Attorney Work Product privileges. There is no change for using Exemption 5 for these privileges.
- For a list of all FOIA exemptions, visit [EPA's Learn about FOIA page](#).

Segregate Nonexempt Information

- The FOIA requires agencies to segregate the releasable information in a responsive record from the exempt information in a responsive record.
- A document should be released in part if any of the information is releasable.
- Non-responsive information within an otherwise responsive record should be released, unless it qualifies under an exemption and can be redacted.

Limiting Search Fees

- The 2016 Amendments further limit the agency's ability to charge for search fees. For the DOJ's FOIA fee guidance, view the [Fee Decision Tree diagram](#) on the intranet.
- Different limitations apply when there are "unusual circumstances" to extend the response time. The list of unusual circumstances may be found by returning to slide 13.

Conclusion

- Thank you for your interest in the FOIA.
- Please feel free to contact the EPA National FOIA Program with questions or feedback on this training.
 - For a list of your local contacts, please visit the [FOIA intranet site](#).
 - EPA's FOIA Service Center can be reached by phone at 202-566-1667.

Course Completed

Congratulations! You have completed the FY17 FOIA Awareness Training. Please notify your supervisor that you have completed the alternative text version of this training.

FY18 FOIA Awareness Training

Alternative Text Version

NOTE: This alternative text version is intended for employees with disabilities that use Assistive Technology. Since completion of text version cannot be automatically tracked, please notify your supervisor once you have read and understood the course, to ensure that you receive proper credit for completing the training.

Freedom of Information Act Training (FY 2018)

Welcome to the EPA's Freedom of Information Act Training course for fiscal year 2018.

Overview

This training will provide you with the following:

- A refresher on the fiscal year 2017 FOIA training, including;
 - A brief summary of the Freedom of Information Act; and
 - The role EPA records plays in regards to the FOIA.
- This course also provides information about the nine FOIA exemptions, and
- FOIA points of contact.

What is the Freedom of Information Act?

- The FOIA is a law that gives any person, including non-U.S. citizens, the right to access information from over 100 federal agencies. View the statutory language of the FOIA, signed in 1966, on the [DOJ's website](#).
- The public's right to access federal government records is enforceable by law.
- The FOIA only applies to Executive Branch agencies and Agency records.
- Agency staff are not required to answer questions posed as a FOIA request.
- For other guidance from the Department of Justice (or DOJ's) Office of Information Policy, view the OIP [website](#).

EPA's FOIA Policy and Procedures

- EPA's National FOIA Program provides the overarching FOIA policy, procedures, and guidance for the Agency as a whole.
- To become familiar with EPA's FOIA Policy, view the policy in its entirety in [PDF format](#).
- To read EPA's enterprise-wide FOIA Procedures, visit the web page on [Procedures for Responding to FOIA Requests](#) on [epa.gov](#).
- EPA has a decentralized process for responding to FOIA requests. Each program and regional office establishes the specific steps that it will follow when processing a FOIA request.
- For additional guidance on your office's specific FOIA procedures, you may contact your Headquarters FOIA Coordinator or regional FOIA Officer. For a list of contacts, visit the [FOIA intranet site](#).

EPA Policy and Procedures – Role of the Headquarters or Regional FOIA Office

- The FOIA process officially begins when a FOIA request is received by an Agency FOIA office (which is currently the National FOIA Program or any EPA regional office).
- The steps involved in processing a FOIA request are outlined in EPA's Agency-wide FOIA Procedures. The National FOIA office steps generally include the following:
 - Receive, review, and acknowledge incoming requests;
 - Determine if the request is in the correct FOIA office;
 - Determine the fee category;
 - Issue determinations on fee-waiver and expedited processing requests; and
 - Assign the request to the Action Office. (Some regional offices have centralized processes where the steps may differ slightly.)
- EPA uses an online system known as FOIAonline to receive, process, and respond to FOIA requests from the public. FOIAonline is managed by EPA and provided as a shared federal service to both EPA and other agencies.

EPA Policy and Procedures – Role of the Action Office

Once an EPA office is assigned responsibility for responding to a FOIA request, it generally takes the following steps:

- Review the request to make sure that staff can identify records that the requester seeks.
- Determine the search parameters and determine whether additional responsive records may be in other Agency organizations.
- Estimate the processing fees, if applicable.
- Determine the response time (this is generally 20 working days, and an additional 10 working days may be added if "unusual circumstances" exist).
- Submit a search or collection request to the Office of Environmental Information's (or OEI's) Discovery Services, as appropriate, when Outlook email records are needed.
- Collect and review the records within the scope of the request.
- Determine which records (or portions) may be withheld and prepare the response letter.
- Finalize the processing fees and obtain approval from an authorized official to release or withhold records.
- And finally, respond to the request in FOIAonline and finalize the action by ensuring that all supporting documentation is entered into FOIAonline.

Knowledge Check #1

Agency-wide FOIA procedures are available on the Internet. Each Headquarters program office or regional office also has a set of procedures for processing FOIA requests.

- a) True; or
- b) False

The correct answer is a) True.

Knowledge Check #2

Whose records can be obtained through a FOIA request?

- a) Executive Branch;
- b) Judicial Branch;
- c) Legislative Branch; or
- d) All of the above

The correct answer is a) Executive Branch.

What is a record under FOIA?

- Under the FOIA, a record is information in an agency's possession and control in any format, including electronic format. The DOJ notes that, for FOIA purposes, the term "records" includes *all* tangible documentations of information, regardless of whether they are records under the Federal Records Act, which can be found in Title 44 of the U.S. Code, Section 3301.
- The definition of a record under FOIA is broader than the definition used by the EPA National Records Management Program.
- Agency employees responding to a FOIA request must keep records in accordance with EPA Records Schedules. FOIAonline is used to store records collected to respond to FOIA requests.

Searching for Records

- If asked to search for records, you may need to look in a variety of locations. Here are some examples of where responsive records may be located:
 - Emails;
 - Filing cabinets (for hard copy records);
 - Personal and share drives;
 - SharePoint sites;
 - Records sent to off-site storage;
 - EZ Records and/or the Enterprise Content Management System (or ECMS); and
 - Mobile phones (for text messages and/or pictures).
- Except in limited circumstances to be discussed with your FOIA Officer or Coordinator and/or FOIA attorney, searches for Microsoft Outlook email messages should be performed by the Agency's centralized Discovery Services within the Office of Environmental Information (or OEI).
- Each office has a Search Point of Contact (called a "SPOC") who will submit the search request to OEI's Discovery Services on your behalf. The list of SPOCs is available on the EPA Intranet.

After Locating Records

- Once you have located the records, you should segregate the *releasable information* in a responsive record from the *exempt information*.
- Exempt information is when the Agency withholds information under one or more of the nine FOIA exemptions, which will be discussed later in this training.
- A document should be released in part if any of the information is releasable. Exceptions do apply. Use redaction software or tape to hide the information that must be protected pursuant to a FOIA exemption.

- Non-responsive information within an otherwise responsive record should be released, unless it qualifies under an exemption and can be redacted.

Foreseeable Harm Standard

- Under the FOIA Improvement Act of 2016, it is only possible to withhold information when:
 - an exemption applies and there is a foreseeable harm of release; or
 - the information cannot be released by law.

What is in a response letter?

- Items in a response letter include:
 - A brief description of the withheld records;
 - A list of one or more exemptions applied;
 - Appeal rights; and
 - Contact information for the EPA Public Liaison and NARA's Office of Government Information Services.
- Sample letters are available on [EPA's FOIA intranet site](#).

FOIA Exemptions

- Like all agencies subject to the FOIA, EPA applies a presumption of openness when responding to FOIA requests.
- Under FOIA, any requester may obtain access to federal agency records *unless* such records or portions of such records are protected from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute.
- When the Agency withholds information, the records must fall under at least one of nine exemptions. The list of exemptions appears below; however, you can also view all nine exemptions by viewing the [Learn About FOIA page](#) on epa.gov.
- This training will cover the exemptions commonly used at EPA. These are exemptions 4, 5, 6, 7(c), and 9.

FOIA Exemption List – Used at EPA

The nine FOIA exemptions include the following:

1. Classified national defense and foreign relations information;
2. Internal agency rules and practices;
3. Information that is prohibited from disclosure by another federal law;
4. Trade secrets and other confidential business information;
5. Inter-agency or intra-agency communications that are protected by legal privileges;
6. Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information);
7. Information compiled for law enforcement purposes;
8. Information relating to the supervision of financial institutions; and
9. Geological information on wells.

Exemption 4

- Under Exemption 4 of the FOIA, agencies can withhold two types of information, depending on the circumstances:
 - The first is *trade secret* information, which is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort when there is a direct relationship between the information at issue and the productive process.
 - The second is *Information* that is related to business or trade, serving a commercial function, or of a commercial nature.
 - This includes information obtained from a person (essentially, any individual or entity outside the federal government) that is privileged or confidential.
 - If the submitter voluntarily provided commercial or financial information, it will be considered confidential if it is the kind of information that the submitter would not customarily release to the public.
 - If the government required the submitter to provide the information, it will be considered confidential if EPA staff determine that disclosure is likely to either impair the government's ability to obtain necessary information in the future *or* cause substantial harm to the competitive position of the submitter.

Exemption 5

- Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency" from Title 5 of the U.S. Code, section 552(b)(5).
- Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation including:
 - The deliberative process;
 - The attorney work-product;
 - The attorney-client; and
 - The commercial information privileges.

Exemption 5 - Deliberative Process Privilege

- The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters.
- The objectives of this privilege are to:
 - Allow staff to feel free to provide the decision maker with their uninhibited opinions and recommendations;
 - Protect against premature disclosure of proposed policies; and
 - Protect against confusing the issues and misleading the public.
- When a record is at least 25 years old, it is no longer protected under the deliberative process privilege.

Exemption 5 – Attorney Work Product

- The attorney work product privilege protects from disclosure any materials prepared by or for a party or its representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) in reasonable anticipation of litigation, or for trial.
- The privilege extends to administrative proceedings (for example, matters before an Administrative Law Judge) as well as to judicial proceedings (that is, matters before a court).

Exemption 5 – Attorney-Client Privilege

- The attorney-client privilege protects confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice.
- This privilege is not limited to the context of litigation.
- It most commonly applies to confidential facts divulged by a client to his or her attorney, and it includes:
 - opinions given by an attorney to his or her client based upon, and reflecting, those facts; or
 - communications between attorneys that reflect confidential information from EPA staff.

Knowledge Check #3

There are _____ FOIA exemptions.

- a) Five;
- b) Nine; or
- c) Twelve

The correct answer is b) Nine.

Knowledge Check #4

The attorney-client privilege applies to both administrative and judicial proceedings.

- a) True; or
- b) False

The correct answer is a) True.

Exemption 6

- Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" from Title 5 of the U.S. Code, section 552(b)(6).
- The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual.

- When determining whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, Agency offices must use a balancing test to determine whether the harm to personal privacy outweighs the benefit of releasing the information to the public.

Exemption 7(c)

- Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding, set forth in subparts (a) through (f) from Title 5 of the U.S. Code, section 552(b)(7)(a).
- Specifically, exemption 7(C) may be applied to withhold references to individuals in law enforcement files.
- Exemption 7 is regularly applied to withhold references to individuals in law enforcement files when:
 - the information identifies individuals referenced in law enforcement records; and
 - the release of this information would not shed light on an agency’s performance of its statutory duties.

Exemption 9

- Exemption 9 covers “geological and geophysical information and data including maps, concerning wells” from Title 5 of the U.S. Code, section 552(b)(9).
- Exemption 9 is rarely used by EPA, so please consult with the National FOIA Program or the Office of General or Regional Counsel about potentially using this exemption before responding to the requester.

Coordinating Multi-Office Responses

- EPA’s FOIA Procedures state that there is a “Lead Office” to coordinate the search for responsive records and to develop a response. The National FOIA Program will assign the Lead Office for each FOIA request submitted to the National FOIA Program.
- The Contributing Office(s) that would like to withhold information under an exemption must:
 - inform the Lead Office about the information that must be withheld and provide the relevant exemption(s); and
 - notify the Lead Office to issue an interim response, if appropriate.

Conclusion

- Thank you for your interest in the FOIA.
- Please feel free to contact the EPA National FOIA Program if you have questions or feedback on this training.
 - For a list of program and regional FOIA contacts, please visit the [FOIA Intranet site](#).
 - The EPA FOIA Service Center can be reached by phone at 202-566-1667.

Test Question 1

A response letter must contain:

- a) Appeal rights;
- b) A list of exemptions for adverse determinations;
- c) A brief description of the withheld records; or
- d) All of the above

The correct answer is d) All of the above.

Test Question 2

Under the FOIA Improvement Act of 2016, it is possible to withhold information when:

- a) An exemption applies and there is foreseeable harm of release;
- b) The information cannot be released under another law;
- c) A FOIA exemption(s) apply; or
- d) Both a and b

The correct answer is d) Both a and b.

Test Question 3

Which exemption allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy”?

- a) Exemption 2;
- b) Exemption 4;
- c) Exemption 6; or
- d) Exemption 12

The correct answer is c) Exemption 6.

Test Question 4

Trade Secrets are protected under the FOIA.

- a) True;
- b) False; or
- c) It depends on the particular circumstances

The correct answer is c) It depends on the particular circumstances.

Test Question 5

The Deliberative Process Privilege (Exemption 5):

- a) Allows staff to feel free to provide the decision maker with his or her uninhibited opinions and recommendations;
- b) Protects against premature disclosure of proposed policies;
- c) Protects against confusing the issues and misleading the public; or
- d) All of the above

The correct answer is d) All of the above.

Course Completed

Congratulations! You have completed the FY18 FOIA Awareness Training. Please notify your supervisor that you have completed the alternative text version of this training.

Message

From: Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]
Sent: 11/13/2018 5:47:04 PM
To: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions

Feeling great,

Ex. 6 Personal Privacy (PP)

From: Gottesman, Larry
Sent: Tuesday, November 13, 2018 11:24 AM
To: Leopard, Matthew (OEI) <Leopard.Matthew@epa.gov>
Subject: RE: The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions

This has been in the works for about 3 months.

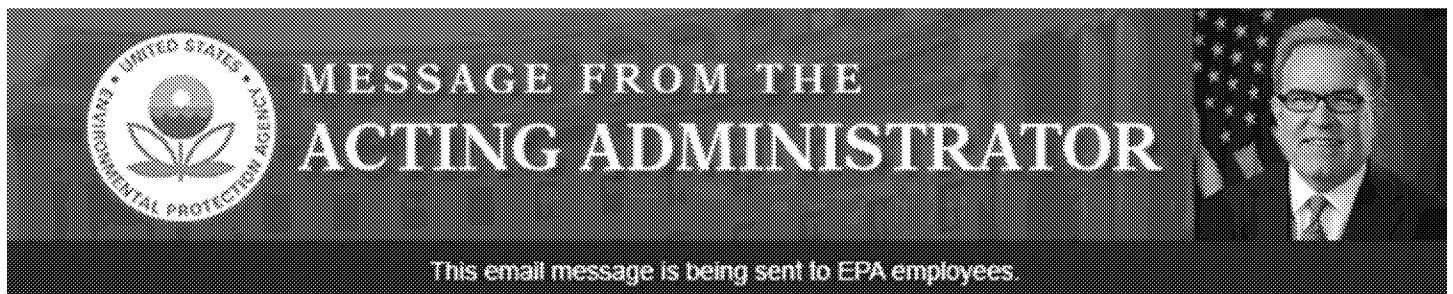
I am fine, how are you doing?

From: Leopard, Matthew (OEI)
Sent: Tuesday, November 13, 2018 9:24 AM
To: Gottesman, Larry <Gottesman.Larry@epa.gov>
Subject: FW: The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions

Good to see some attention on this. Hope you are well.

Matt

From: Message from the Administrator
Sent: Tuesday, November 13, 2018 9:13 AM
To: Message from the Administrator <messagefromtheadministrator@epa.gov>
Subject: The Freedom of Information Act (FOIA): An Important Tool for Promoting Transparency and Building Public Trust in Agency Actions



Colleagues,

Throughout the history of the U.S. Environmental Protection Agency (EPA), Administrators have reaffirmed a commitment to transparency in our agency's operations. The Freedom of Information Act (FOIA) is an

important tool for promoting transparency and building public trust in agency actions. I reaffirm the Agency's commitment to operating in an open and transparent manner, and I encourage all Agency employees to join me to help improve the Agency's FOIA response efforts. The success of our efforts at the EPA directly depends on the trust of the public we serve.

Key Messages

- **Transparency:** The EPA is committed to operating in an open and transparent manner. People have the right to access agency records, except where the information is protected from disclosure.
- **Timeliness:** The EPA will improve the timeliness of our FOIA responses.
- **Quality:** The EPA will improve the quality of our FOIA responses so that the public receives both clear communication about the FOIA process and appropriately redacted records.
- **Professionalism:** The EPA will bolster our training efforts and ensure that our FOIA professionals have the resources they need to help make the EPA a flagship example of transparent, efficient and effective government.

General Principles

Like all federal agencies, the EPA is subject to FOIA. FOIA encourages accountability through transparency, and pursuant to FOIA, any person has the right to access agency records, except where the information is protected from disclosure. The Agency is committed to conducting its business in an open and transparent manner. The Agency will work to ensure that its FOIA professionals have the support needed to satisfy FOIA's requirements in a timely and efficient a manner. The EPA should also strive, when possible, to proactively provide the public with access to information that is likely to be requested under FOIA to better assist the public to participate and engage with the Agency.

Because the EPA is a public regulatory agency, staff may come into possession of information that may need to be protected from disclosure under FOIA, including confidential business information, trade secrets, deliberative information, or personal privacy information. Although the Agency's business is to be conducted in an open, accountable manner, we must also ensure that sensitive information entitled to special protection is handled with the utmost care and in full compliance with all applicable laws and regulations. The EPA's FOIA Regulations are available [here](https://www.ecfr.gov) (<https://www.ecfr.gov>).

Important Steps Taken to Date

The Agency has taken several steps recently to improve its FOIA program. The Agency's FY 2018-2022 EPA Strategic Plan sets one of its Strategic Goals as increasing transparency and public participation. Measures for meeting this goal include eliminating the backlog of pending FOIA requests and meeting the requisite deadlines for responding to FOIA requests. As part of this improvement effort, in April of 2018, the Agency created the National FOIA Office within the Office of General Counsel and soon thereafter delegated to the General Counsel the Chief FOIA Officer functions. These functions include FOIA regulations and policy, public liaison and data-reporting, training, and assisting offices Agency-wide that are responsible for FOIA. The General Counsel also oversees legal counseling, FOIA appeals, and FOIA litigation as well as the FOIA Expert Assistance Team (FEAT), which was created in 2014 and has been very successful at efficiently managing the Agency's most complex FOIA issues. Additional FOIA professionals are being hired to increase the services the National FOIA Office provides.

To enhance accountability, the Agency recently announced a reorganization of the Regional Counsel Offices to provide clear authority and reporting lines for FOIA offices in the regions. FOIA accountability language is also being added to FOIA manager performance agreements Agency-wide.

At the same time, the Agency also launched a significant effort to tackle the large volume of FOIA requests within the Administrator's Office. This initiative (known as the AO4 project) included:

1. Centralizing the FOIA process for four sub-offices,
2. Engaging the FEAT from OGC to provide critical project management, legal guidance, and training,
3. Standing up a "Tiger Team" of 12 staff dedicated to FOIA review and processing, and
4. Hiring additional FOIA professionals.

So far, this effort has yielded significant results and continues to make deep inroads into the Administrator's Office's backlog. I want to thank all who helped with these efforts and with prior backlog reduction initiatives in the program and regional offices. All Agency components should continue to tackle their FOIA backlog. I am directing the National FOIA Office to circulate monthly a report of the FOIA request backlog across EPA.

In addition, last fall, the EPA hosted a multi-day conference for over 180 of the Agency's FOIA professionals. The conference was the first of its kind in more than a decade. The training agenda tracked the life cycle of a FOIA and addressed legal issues encountered at all stages of FOIA processing. Last fall's conference represents the first of a two-phased training program. The second phase, described below, involves specialized FOIA training for supervisors.

In February 2018, the Agency also held a multi-day Lean event focused on FOIA. That event resulted in two pilot projects that the National FOIA Office has led in conjunction with the Office of Continuous Improvement (OCI) to identify bottlenecks and help streamline the FOIA response process.

Moving Forward to Improve the FOIA Process

The Agency's leadership intends to continue to take steps to improve its FOIA process this year. In addition, I encourage organizations responsible for FOIA to undertake their own projects to improve FOIA processing. These should include centralization of FOIA review and management functions in the organization, adding tracking identification numbers to all documents released through FOIA, hiring additional staff, and providing supplemental training using existing resources.

To meet the transparency and public participation Strategic Goal, the EPA must work to ensure that it is not only providing responses to FOIA requests in a timely manner, but also that those responses are of the highest quality. Programs and regions should continue implementing current EPA FOIA policy and procedures to help reduce errors in their responses. For instance, all organizations should continue to have at least two knowledgeable individuals, including one manager, review all documents before they are released to the public to improve accuracy and consistency in release determinations. See Freedom of Information Act Policy, [CIO 2157.1](#) (September 20, 2014) (available at [https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL\(with-electronic-signature\).pdf](https://intranet.epa.gov/foia/docs/FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf)).

Further, the Agency should continue FOIA training for all staff. To that end, the Office of General Counsel is planning the second phase of the training program mentioned above. This second phase of the training program will include a training directed at supervisors, including Division Directors or the equivalent, responsible under the Agency's FOIA Policy for the review of FOIA responses. These training efforts and continued annual training of our FOIA professionals will help ensure that the Agency is responding effectively and efficiently to FOIA requests and utilizing fully available technological resources. Questions about whether FOIA exemptions apply to certain information or other questions about FOIA processing should be directed to the Office of General Counsel.

Federal Records Act Requirements

For the Agency to have an effective FOIA program, the Agency must also ensure that it has a robust Federal Records program. The Federal Records Act provides the foundation for transparency at the EPA. Under the Federal Records Act, employees must create and maintain records that document the persons, places, things, or matters dealt with by the agency and which facilitate action by agency officials and their successors in office. Proper records management protects the financial, legal, and other rights of the EPA and of persons directly affected by the EPA's actions, and permits adequate oversight of the Agency's work by Congress and the public. All employees must take care to document the formulation and execution of basic policies and decisions, and the taking of necessary actions. It is particularly important that all employees understand that the Federal Records Act requirements apply to oral communications. All substantive decisions and commitments reached orally should be documented. You can learn more about the Federal Records Act at <http://intranet.epa.gov/records/>. Should you have any questions about your Federal Records Act obligations, you should contact the Records Help Desk by calling 202-566-1494 or emailing records@epa.gov.

Conclusion

The Agency is facing an unprecedented volume of FOIA requests. Despite this enormous challenge, the EPA is committed to conducting its business in an open and transparent manner and will continue to take steps to improve the efficacy and efficiency of its FOIA process. I look forward to working with all of you to make the EPA a flagship example of transparent, efficient, and effective government.

Andrew Wheeler
Acting Administrator

Message

From: Schumacher, Wendy [schumacher.wendy@epa.gov]
Sent: 9/27/2018 7:51:14 PM
To: Epp, Timothy [Epp.Timothy@epa.gov]
CC: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: FOIA Regulations Master Comment Log 5-24-2017.docx
Attachments: FOIA Regulations Master Comment Log 5-24-2017.docx

Tim,

Larry asked me to share the Comment Log with you. This includes comments from Regions and HQ Program Offices in addition to OGC.

Please let us know if you need anything else.

Wendy
Wendy Schumacher, Ph.D., PMP
National FOIA Office
Government Information Specialist
(202) 566-2513
email: schumacher.wendy@epa.gov

Message

From: Schumacher, Wendy [schumacher.wendy@epa.gov]
Sent: 8/6/2018 11:22:40 AM
To: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: National FOIA Office Operations Manual_2018 08 06.docx
Attachments: National FOIA Office Operations Manual_2018 08 06.docx

Larry,

A hard copy is in your in box.

Please let us know when you'd like to implement.

Wendy
Wendy Schumacher, Ph.D., PMP
National FOIA Office
Government Information Specialist
(202) 566-2513
email: schumacher.wendy@epa.gov

National FOIA Operations and Resource Team (FORT) Manual

August 6, 2018

U. S. Environmental Protection Agency

Table of Contents

[TOC \o "1-3" \h \z \u]

[PAGE * MERGEFORMAT]

INTRODUCTION

Purpose

This manual covers functions performed under the National FOIA Operations and Resources Team (FORT) and the National FOIA Program. FORT staff, and grantees/contractors may perform both sets of functions concurrently. FORT activities will be in accordance with Federal regulations and EPA policy and procedures. Providing excellent customer support to FOIA requesters requires flexibility and continuous learning. Users of this manual are encouraged to use a variety of other FOIA references and resources as appropriate. These are located on or may be accessed through the EPA FOIA Internet and Intranet sites.

National FOIA Operation Office Functions

This manual describes internal FORT processes for receiving and handling Headquarters FOIA requests. Agency-wide processes are detailed in the EPA Information Procedure entitled "Procedures for Responding to FOIA Requests." Both documents must be used together and can be found at: <http://intranet.epa.gov/foia/FOIA-Procedures.html>.

Use of FOIAonline has allowed EPA to implement best practices and streamline its FOIA processes. Out of necessity, some processes and decision making remain outside the system. This manual (in conjunction with the EPA FOIA procedures mentioned above) explains how those activities are to be performed and when and where the activities should be documented. It is assumed that FORT staff and grantee/contractor have taken FOIAonline training and are knowledgeable users of the system.

This manual also documents activities associated with managing the National FOIA program for both EPA headquarters and regions. The FORT supports the EPA FOIA community by providing guidance, training, and decision making for fee waiver and expedited processing requests. It also maintains the FOIA Requester Service Center as a contact point for the public. Finally, it supports other federal agencies by managing FOIAonline and its interagency governing board.

Supervision and Management

The FORT and the EPA National FOIA Program is managed by the Director of the National FOIA Office. The General Counsel is the Chief FOIA Officer.

FORT FUNCTIONS

Receiving and acknowledging requests

All FOIA requests and appeals must be in writing. Although FOIAonline is the primary way that FOIA requests are received in EPA, some requests are submitted in other ways. These must be manually entered into FOIAonline within 1 day of receipt. Staff, usually grantees/contractors, perform the data entry for requests and appeals received as:

- emails to FOIA group email box – [[HYPERLINK "mailto:FOIA_HQ@epa.gov"](mailto:FOIA_HQ@epa.gov)]
- hard copies/emails routed to the FORT with FOIA requests that are forwarded from other federal organizations (e.g., referral or consultation) or congressional offices on behalf of constituents
- hard copy documents sent to EPA

If the request **does not have a mailing address**, then staff in charge of the FOIA group email box will attempt to contact the submitter by email or telephone to get the address. Requests without mailing addresses cannot be entered into FOIAonline.

FOIAonline will automatically send a receipt to the requester that includes the tracking number and submission date for all requests entered in the system. If an email address was not provided by the requester, the support staff will prepare an acknowledgement with the tracking number and submission date which will be signed by the Agency FOIA Officer and sent out by regular mail. A PDF copy of the acknowledgement letter sent by regular mail must be placed into the FOIAonline case file.

National FOIA Operations Program Group Email Box

Staff in charge of the FOIA group email box will either respond to or forward all emails to the appropriate staff person at least twice each day: before noon and before 5pm. A PDF copy of all emails must be placed into the FOIAonline case file within one day.

Reviewing requests

National FOIA Specialists will review the requests, verify the following criteria, and respond as follows:

	Criteria to Be Verified	Response if Criteria Not Met
1.	Request reasonably describes the records that are sought. <ul style="list-style-type: none">• A description is considered sufficient if it enables a typical Agency employee familiar with the subject to locate the records with a reasonable amount of effort.	If description is missing, inadequate, or phrased as a question the specialist will call requester or send the clarification letter. If the requester does not respond or does not wish to change

	Criteria to Be Verified	Response if Criteria Not Met
	<ul style="list-style-type: none"> Request must seek records rather than posing a question or questions. However, if the question or questions can easily be interpreted as constituting a request for Agency records, the request should be processed under FOIA. 	the description, prepare the follow-up letter for failure to clarify for Agency FOIA Officer signature.
2.	<p>Records requested are expected to be within Agency control.</p> <p>Records not expected to be in Agency control are:</p> <ul style="list-style-type: none"> Records that do not exist or will not be created until a future date (such as an upcoming report). Records that exist (in their entirety) in another federal agency. 	If records are not within Agency control, specialist will contact requester and suggest alternatives. If requester does not change the request, specialist will prepare a final action letter for Agency FOIA Officer signature.
3.	Records are not purely personal.	If purely personal, specialist will close request and prepare the proper final action letter for Agency FOIA Officer signature.

All communications with the requester (whether by email, telephone, or letter) must be documented in FOIAonline in the comments field or uploaded as a PDF file in Correspondence - Other. Whenever possible, emails to requesters should be initiated through FOIAonline. If not, then a copy of all email correspondence must be uploaded or attached to the system, preferably as a PDF file. Records of telephone calls initiated or received must be documented in FOIAonline in the Comment field or by follow up via email or regular mail. Documentation must include the date and content of the discussion.

Routing misdirected requests

If the responsive records are not expected to be located at EPA headquarters, but rather in an EPA region or another federal agency, the National FOIA Specialist will reroute the request to the appropriate FOIA office. **This must be done within 10 working days of when the request was received at EPA via FOIAonline, email, fax or hard copy.**

To Headquarters Program Offices: Requests for records held at Headquarters will be routed to the appropriate EPA regional FOIA office in FOIAonline within 10 working days of when the request was received at EPA.

To Regions: Requests for regional records will be routed to the appropriate EPA regional FOIA office in FOIAonline. They will remain open for the region to process.

To Other Agencies: If requests are transferred (in full) to another agency, the National FOIA Specialist will prepare a letter to the requester explaining the reason for the transfer and providing the contact information for the other agency within two days. The letter will be signed by the Agency FOIA Officer, scanned into FOIAonline, and mailed to the requester via FOIAonline or regular mail. Once that is completed, the National FOIA Specialist will close the request in FOIAonline.

Perfecting requests and starting the clock

Perfecting a request includes the process of: reviewing the request, working with the requesters to clarify criteria, routing misdirected requests, and doing any other work needed to prepare the request for assignment and processing. Once this is complete, the FORT staff changes the status of the request in FOIAonline to “perfected.” In most cases the program office or region will contact the requester for clarification. This initiates the statutory 20 day working period for EPA’s response.

At the same time FORT staff should assign the fee category and change the description to “yes” to release to the public unless it contains personal information. Modify the description so that there is a version that may be released to the public or if the description is something like “see attached.”

Consultations and Referrals

The grantee/contractor who receives the mail makes a copy of the cover letter of every referral and consultation before assigning to one of the National FOIA Specialists. The cover letter is held in a file by the grantee/contractor. The grantee/contractor hand carriers or forwards the email containing the entire file to one of the National FOIA Specialists on a rotating basis who will enter into FOIAonline within one day of receipt. There are separate work forms for referrals and consultations.

Routing requests to Headquarters FOIA coordinators and assigning tasks

The National FOIA Specialist routes the perfected request to the FOIA Coordinator in the headquarters program or staff office where they believe the majority of responsive records are held. (OGC has its own coordinator.) The coordinator in each office may process the request themselves (in other words, they may act as an Action Office) or they may further route it to the specific Action Office where most of the records are held. If any additional records are needed outside the jurisdiction of the FOIA Coordinator, then the FOIA Coordinator may create additional tasks in FOIAonline and assign those to other FOIA coordinators.

Note: Action Offices have responsibility for processing requests. Staff in Action Offices may also create tasks for other offices if, 1) the receiving office for the assignment is under the same FOIA coordinator as they are and, 2) is not of a higher organizational level.

Approving due date extensions for Headquarters Action Offices

If a Headquarters Action Office needs additional time beyond the 20 day working period to process a request due to “unusual circumstances” or because the due date for a request has already been extended once before in accordance with FOIA regulations, the Action Office follows the sequence of activities outlined in the EPA “Procedures for Responding to FOIA Requests.” These include contacting the requester, negotiating additional time, and documenting the outcome. Once that is done, the Action Office enters the new requested due date and the justification for the extension into FOIAonline (using the Extend Due Date button). The system generates a notice to the FORT for approval.

Support grantees/contractors for FORT assign the task to the National FOIA Specialist who originally perfected the request. **The National FOIA Specialist makes a decision within two working days**, documents his or her decision (with comments, if necessary) in FOIAonline. The Action Office will communicate the new due date to the requester if necessary.

Managing records and documentation

From October 1, 2012, forward, all FOIA correspondence, documentation, and responses (with the exception of very large data files) are maintained in FOIAonline. Large data files are handled on a case by case basis, in accordance with direction from the Agency FOIA Officer.

Prior to October 1, 2012, Office staff maintained hard copies of the material associated with Headquarters FOIA requests. Unless the case is open or there is litigation, this material is being destroyed in accordance with FOIA record schedules. Per the schedules, this is usually six years from date of closure for requests granted in full and six years from closure for requests that have been denied, partially granted, or where no records were found. By October 1, 2018, most hard copy FOIA files in the FORT will be destroyed.

NATIONAL FOIA PROGRAM FUNCTIONS

Serving customers: Role of FOIA Requester Service Center and Public Liaison

EPA maintains the FOIA Requester Service Center as a national FOIA hotline for customers. The telephone number is the same as the FORT (202-566-1667) and the email is [[HYPERLINK "mailto:FOIA_HQ@epa.gov"](mailto:FOIA_HQ@epa.gov)]. The center is staffed by Headquarters FOIA specialists and support grantees/contractors who perform this work in addition to other duties. Requesters may call or send an email to receive guidance on the types of information available on EPA’s Websites or obtain general information on FOIA. Usually Service Center staff are able to help, but if not they refer the inquiries to FOIA coordinators in the program offices or Regional FOIA Officers. If individuals are ready to submit a FOIA request or wish

[PAGE * MERGEFORMAT]

to check on the status of a prior request, the staff person answering the call or email will refer them to the FOIA Officer or Coordinator of the organization processing the request. After forwarding the call add a Comment or add a PDF of the email to FOIAonline.

EPA's Public Liaison function is filled by the Agency FOIA Officer. The Public Liaison assists with resolving requester's disputes. He/she facilitates timely FOIA responses, provides information on the status of requests and fosters greater openness and transparency in the Agency's FOIA administration activities.

Serving FOIA professionals: Role of Agency FOIA Officer and National FOIA Specialists

The Agency FOIA Officer is the primary agency subject matter expert on all aspects of FOIA. Following legal determinations and guidance provided by the Office of General Counsel, the Agency FOIA Officer works collaboratively across EPA to implement the program. He/she leads EPA FOIA training; supports development and dissemination of policy; procedures, and guidance; provides leadership for development and enhancement of automated systems, tools, and websites; and responds to questions from senior management, the FOIA community of interest (e.g., FOIA coordinators, FOIA officers, FOIA specialists) and EPA staff. He/she plans and facilitates regular conference calls and meetings with the FOIA community. He/she reports to the Associate Director.

Any National FOIA Specialist may receive inquiries from EPA employees and grantees/contractors regarding how to process FOIAs. If they know the answer, they may respond at that time. If not, they seek guidance from the Agency FOIA Officer and respond as quickly as possible. An example of a common question is what to do with misdirected requests. Requests sent by the public to an office other than a FOIA Office are always considered "misdirected."

Measuring the success of the program

It is the goal of the EPA FOIA Program to continually reduce the backlog of open FOIA requests even if the total number of requests increases from year to year. Results of the Lean Kaizen event will help refine the measures.

FOIAonline includes reporting capability that allows FOIA coordinators and officers to pull reports for their organizations that reflect pending and completed FOIA requests and other information.

Performance reports for senior EPA management and the Department of Justice (DOJ) are prepared in OGC by the Agency FOIA Officer and Associate Director. They include information from FOIAonline, but may also require additional information which varies by year. Two reports are mandatory: Annual FOIA Report which contains fiscal year statistics; and the Chief FOIA Officer's Report which is qualitative.

Handling fee waiver (FW) requests

Requesters seeking a fee waiver must submit their desire for a waiver with their initial FOIA request. **EPA has a goal of making all fee waiver determinations within 10 working days of receipt.**

Once initiated, FOIAonline will automatically set up a task to track the status of the fee waiver. For requests initially received at the FORT, the support grantee/contractor for the FORT will assign the fee waiver task to the same National FOIA Specialist who was assigned to distribute the request. For requests received in a region, the Regional FOIA Officer will route the fee waiver task to the FORT where it will be assigned by the support grantee/contractor to the National FOIA Specialist who covers that region.

The individual in the EPA program, staff, or regional office who has been assigned responsibility for the FOIA request is still required to determine if the request is billable (over \$14.00) or unbillable. They must be contacted **within five working days of receiving the FOIA request.** They notify the National FOIA Specialist of their opinion by calling, email or comment in FOIAonline. If they do not respond within two days, the National FOIA Specialist will make the determination. The National FOIA Specialist may request input on whether or not the request is billable through a task in FOIAonline or through email messages which are converted into PDF files and uploaded into FOIAonline.

The National FOIA Specialist may fill out a Fee Waiver Processing Sheet. They note the billable/non-billable status on the sheet based on the input received above. If there are no billable fees associated with processing the request, they may skip to the bottom of the form and check "Non-Billable." If billable, they make a recommendation whether to grant or deny the fee waiver based on the following factors outlined in 40 C.F.R. § 2.107(I)(5):

1. *Does request involve government operation or activities; Y or N*
2. *Would the release of the information "likely to contribute" to understanding of government operations or actions; Y or N*
3. *Would the disclosure contribute to public understanding (media presumed to satisfy this criteria). How does the requester plan on dissemination this information; Y or N*
4. *Will the release "significantly" contribute to public understanding (all justifications for a fee waiver request must be specific and not generic): Y or N or N/A*
5. *If commercial requester has an interest that would be furthered by disclosure; and Y or N*
6. *If criteria 5 is met, does commercial interest outweigh public interest? Y or N*

The National FOIA Specialist prints the Fee Waiver Processing Sheet and prepares a draft determination letter that is addressed to the FOIA requester. The specialist hand carries the document(s) to the Agency FOIA Officer for approval and signature.

The Agency FOIA Officer is responsible for making the fee waiver decision and signing the Fee Waiver Processing Sheet, if provided, and determination letter. Letter templates are available at: [HYPERLINK "<http://intranet.epa.gov/foia/FOIA-letters.html>"]. Once this has been done, the National FOIA Specialist scans the letter and uploads it to FOIAonline as the document of record. (Note: The specialist should double check and make sure the document

loaded correctly.) The specialist then creates an email within the system, attaches a copy of the signed determination letter, and sends it to the requester. If no email address was provided by the requester, the letter is mailed via regular mail after uploading a copy of the letter into FOIAonline. The National FOIA Specialist closes out the fee waiver task in FOIAonline by checking the appropriate box to reflect the Agency FOIA Officer's decision. When the task is closed, the EPA employee that was assigned the FOIA request will be automatically notified of the determination by FOIAonline.

The requester may appeal the determination to OGC and, if they are still not satisfied, to district court.

Handling expedited processing (EP) requests

All requests for expedited processing must be submitted with the initial FOIA request. Determinations on EP requests will be made by the Agency FOIA Officer based on the factors outlined in 40 C.F.R. 2.104(e) (see below). **The Agency must document in FOIAonline whether or not to grant an EP request within 10 calendar days of receipt.** The National FOIA Specialist gives the draft letter to the Agency FOIA Officer for signature. Letter templates are available at: [HYPERLINK "<http://intranet.epa.gov/foia/FOIA-letters.html>"]. The Agency FOIA Officer may consult others prior to granting EP. If the request is granted, it must be given priority by the Action Office and be the next request in line for processing. However, the request itself is not required to be processed with the 10 calendar days.

Once initiated, FOIAonline will automatically set up a task to track the status of the EP request. For requests initially received at the FORT, the support grantee/contractor for the FORT will assign the EP task to the same National FOIA Specialist who was assigned to distribute the request. For requests received in a region, the Regional FOIA Officer will route the EP task to the FORT where it will be assigned to the National FOIA Specialist who covers that region.

There are two conditions under which an EP may be approved:

- 1) Request is from an individual **in the media** who has "an urgency to inform the public about an actual or alleged Federal government activity." This factor is restricted to media applicants because the information must be "requested by a person primarily engaged in disseminating information to the public."
- 2) Request is from an individual who is applying because of "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."

The National FOIA Specialist prepares a draft determination letter that is addressed to the FOIA requester (template available on Intranet site). The specialist hand carries the letter(s) to the Agency FOIA Officer for approval.

The Agency FOIA Officer is responsible for making the EP determination and signing the letter. Once this has been done, the National FOIA Specialist scans the letter and uploads it to FOIAonline. The specialist then creates an email within the system, attaches a copy of the signed determination letter, and sends it to the requester. If no email address was provided by the requester, the letter is mailed via regular mail. The National Headquarters Specialist closes out the EP task in FOIAonline by checking the appropriate box to reflect the Agency FOIA Officer's determination. When the task is closed, the EPA employee that was assigned the FOIA request will be automatically notified of the determination by FOIAonline.

The requester may appeal the determination to OGC and, if still not satisfied, to district court.

Developing and disseminating Agency FOIA policy, procedures, guidance and other information

The FORT is responsible for:

- Maintaining FOIA related material in the Code of Federal Regulations (CFR), Title 40, Chapter 1, Part 2 – Public Information
- Developing and maintaining EPA FOIA Policy, procedures and guidance; and
- Updating the FOIA Delegation of Authority (known as 1-30).

The CFR takes precedence over the other documents which should be written to align with it. Each time a draft of one of the above documents is prepared General Law Office staff will review and provide comments to ensure that the material is legally in compliance with FOIA and DOJ FOIA guidelines. Drafts are then circulated for comment among the FOIA community. Finally, each document will go through the official Agency approval processes required for the specific document.

Information about the National FOIA Program can be found on both the EPA FOIA Internet and intranet sites. The sites are maintained by FORT staff. Extensive coordination with program and staff offices and regions is critical to keeping the sites usable and current. The Internet site is designed for customers and contains possible sources of information that may be used in lieu of FOIA requests as well as contacts and links to FOIAonline. Libraries with source information are maintained for each region, and Regional and program office FOIA coordinators and officers assist by maintaining local libraries with source information. The intranet site is for the FOIA community as well as EPA employees and grantees/contractors. It contains guidance, management reports and information about resources and training.

Providing FOIA training

The National FOIA program is responsible for coordinating FOIA training across the agency. Training changes frequently and covers a range of topics. Examples are:

- Training on current topics for FOIA professionals is included in the monthly Headquarters FOIA Coordinators Meeting and the monthly FOIA Officers' Teleconference for Regional FOIA Officers.

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- A FOIA Boot Camp is offered for EPA Managers upon request. It is a two-hour class and is taught jointly by the Agency FOIA Officer and OGC staff.
- Online FOIA training is mandatory for all EPA staff and is distributed through the Agency's training system.
- Specialized training may be offered by DOJ at any time.

Managing and Enhancing FOIAonline

FOIAonline, launched October 1, 2012, allows users to search for records, file FOIA requests, check their status, run reports, and file appeals. Although it was developed and continues to be managed by EPA, it is now shared with other federal agencies and changes to the system must be approved by the interagency governing board. Effective use and growth of the system is essential to allow EPA to meet the increasing numbers of FOIA requests expected in the future. As the initiator of the system, the National FOIA program has a special role in promoting its use among other agencies. It is also responsible for collecting and managing EPA's requirements.

National FOIA Specialists support EPA FOIA professionals by answering questions about FOIAonline. They may need to clarify what is in the system or help users navigate screens. As experts in both FOIA processes and the system, they also collect and forward EPA's requirements for enhancements to the Agency FOIA Officer who consolidates them for consideration by the governing board.

Agencies participating in FOIAonline, share the costs of maintaining and enhancing the system.

Coordinating with General Law Office, Office of General Counsel

The Information Law Practice Group works closely with the National FOIA Program staff to provide interpretations of FOIA law and resolve legal issues. OGC is also the first level of appeal for requesters unless the original action office was the Office of the Inspector General (OIG). (OIG is an independent component of EPA and must handle its own FOIA responses and appeals). OGC follows federal guidance from the DOJ, Office of Information Policy. OGC and DOJ serve as co-counsels in FOIA litigation.

As mentioned above, OGC reviews and comments on FOIA policy, procedures and other material developed by the National FOIA Program. OGC staff may also assist with leading FOIA training.

Message

From: Calderon, Wanda [Calderon.Wanda@epa.gov]
Sent: 2/15/2019 7:17:31 PM
To: Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: Interim FOIA Policy and Procedures Update

I don't see 'em – where did you “sent to you”? Zimbabwe?

Wanda Calderon
Government Information Specialist
Public Outreach Branch
US EPA Region 2
www.epa.gov/foia

From: Gottesman, Larry
Sent: Friday, February 15, 2019 2:11 PM
To: Calderon, Wanda <Calderon.Wanda@epa.gov>
Subject: RE: Interim FOIA Policy and Procedures Update

Thanks, they were just sent to you.

From: Calderon, Wanda
Sent: Friday, February 15, 2019 1:04 PM
To: Gottesman, Larry <Gottesman.Larry@epa.gov>
Subject: FW: Interim FOIA Policy and Procedures Update

Hi,
Can I get the attachment referenced in the attached memo?

Wanda Calderon
Government Information Specialist
Public Outreach Branch
US EPA Region 2
www.epa.gov/foia

From: Mugdan, Walter
Sent: Friday, February 15, 2019 12:58 PM
To: Calderon, Wanda <Calderon.Wanda@epa.gov>; Kluesner, Dave <kluesner.dave@epa.gov>; Mears, Mary <Mears.Mary@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>
Subject: FW: Interim FOIA Policy and Procedures Update

FYI:

From: Leopold, Matt (OGC)
Sent: Friday, February 15, 2019 12:56 PM
To: Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Stanich, Ted <Stanich.Ted@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; White, Elizabeth

<white.elizabeth@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Lapierre, Kenneth <lapierre.kenneth@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Cook, Steven <cook.steven@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Wildeman, Anna <wildeman.anna@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Sheehan, Charles <Sheehan.Charles@epa.gov>; Shields, Edward <Shields.Ed@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; Lopez, Peter <lopez.peter@epa.gov>; Mugdan, Walter <Mugdan.Walter@epa.gov>; Schaaf, Eric <Schaaf.Eric@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Servidio, Cosmo <servidio.cosmo@epa.gov>; Rodrigues, Cecil <rodrigues.cecil@epa.gov>; Coe, Mary <Coe.Mary@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Walker, Mary <walker.mary@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>; Payne, James <payne.james@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>; Frey, Bert <frey.bertram@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Gray, David <gray.david@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>; Gulliford, Jim <gulliford.jim@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Humphrey, Leslie <Humphrey.Leslie@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Thomas, Deb <thomas.debrah@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Joffe, Brian <Joffe.Brian@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Stoker, Michael B. <stoker.michael@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>; Busterud, Gretchen <Busterud.Gretchen@epa.gov>; Hladick, Christopher <hladick.christopher@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Stern, Allyn <Stern.Alynn@epa.gov>; Castanon, Lisa <Castanon.Lisa@epa.gov>; OGC NFO <OGC-NFO@epa.gov>

Subject: Interim FOIA Policy and Procedures Update

Colleagues,

Over the last year, the Agency has taken significant steps to improve our implementation of the Freedom of Information Act (FOIA). Improvements include a Strategic Goal on transparency as well as reorganizations that created a new National FOIA Office in the Office of General Counsel, delegated the Chief FOIA Officer functions to the General Counsel, and launched a reorganization of the regional FOIA programs into the Regional Counsels Offices. Today, I am issuing an interim FOIA Policy and Procedures Update to reflect the current organizational structure and to make clear that the Agency should continue to follow the Agency's FOIA Policy and Procedure as well as OGC's guidance on the FOIA Improvement Act of 2016. Over the coming months, the Agency plans to issue an update to EPA's FOIA regulations to be consistent with the FOIA Improvement Act of 2016, and I have directed the National FOIA Office thereafter to review and provide additional updates to these FOIA Policy and Procedures consistent with any regulatory changes.

If you have questions regarding the attached documents, or if you have suggestions for improving the Agency's implementation of the FOIA, please call Timothy Epp, Acting Director of the National FOIA Office at 202-564-2830.

Best Regards, Matt

Matthew Z. Leopold
General Counsel
U.S. Environmental Protection Agency
(202) 564-8040

Message

From: Gottesman, Larry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3DBF872F954FBEB950E98C56BDC431-LGOTTESM]
Sent: 4/17/2018 6:50:43 PM
To: Bigioni, Neil [bigioni.neil@epa.gov]
Subject: GC Memos Collection Project Tracking Chart.xlsx
Attachments: FOIA-Proc_August2014-09-30FINAL(with-electronic-signature).pdf; FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf; GC Memos Collection Project Tracking Chart.xlsx

Attached is the a PDF of the Policy and Procedures and the updated spreadsheet.

Thanks

Larry F. Gottesman
Agency FOIA Officer
Office of General Counsel
U.S. Environmental Protection Agency

202-566-2162 (Direct line)
202-689-4588 (Mobile)
202-566-1667 (Main line)

Message

From: Gottesman, Larry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7B3DBF872F954FBEB950E98C56BDC431-LGOTTESM]
Sent: 4/16/2018 9:04:01 PM
To: Bigioni, Neil [bigioni.neil@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]
Subject: RE: GC Memos Collection Project (Due 4/27)
Attachments: FOIA-Policy-August2014-09-30FINAL(with-electronic-signature).pdf; FOIA-Proc_August2014-09-30FINAL(with-electronic-signature).pdf

<http://intranet.epa.gov/foia/FOIA-Procedures.html>

The Agency Policy and Procedures are attached and a link to all the Agency FOIA Procedures.

Larry F. Gottesman
Agency FOIA Officer
Office of General Counsel
U.S. Environmental Protection Agency

202-566-2162 (Direct line)
202-689-4588 (Mobile)
202-566-1667 (Main line)

From: Bigioni, Neil
Sent: Monday, April 16, 2018 5:00 PM
To: Gottesman, Larry <Gottesman.Larry@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>
Subject: RE: GC Memos Collection Project (Due 4/27)

I think it sounds worth including. Please obtain a pdf of the document and fill out the tracking chart that was attached to the original email.

From: Gottesman, Larry
Sent: Monday, April 16, 2018 4:57 PM
To: Bigioni, Neil <bigioni.neil@epa.gov>; Walker, Denise <Walker.Denise@epa.gov>
Subject: RE: GC Memos Collection Project (Due 4/27)

I don't think this is relevant to the project, but we did issue a FOIA Policy and National FOIA Procedures about 3 years ago.

Larry F. Gottesman
Agency FOIA Officer
Office of General Counsel
U.S. Environmental Protection Agency

202-566-2162 (Direct line)

202-689-4588 (Mobile)
202-566-1667 (Main line)

From: Bigioni, Neil
Sent: Monday, April 16, 2018 4:50 PM
To: Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
Subject: FW: GC Memos Collection Project (Due 4/27)

From the description of relevant documents below (under Explanation of Project), I would not think either side of the National FOIA Office would have much if anything responsive, but can you please either confirm that to me or let me know to the contrary. You may feel free to circulate as necessary to form your response.

There will be a new delegation designating Matt as the Chief FOIA Officer for the agency, but Elise has taken that over and it is not final.

Thanks,

Neil

From: Mills, Derek
Sent: Monday, April 16, 2018 2:38 PM
To: Albores, Richard <Albores.Richard@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Briskin, Jeanne <Briskin.Jeanne@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Grant, Brian <Grant.Brian@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Lattimore, Kraig <lattimore.kraig@epa.gov>; Lee, Terry <lee.terry@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Michaud, John <Michaud.John@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Redden, Kenneth <Redden.Kenneth@epa.gov>; Rhines, Dale <rhines.dale@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Youngblood, Charlotte <Youngblood.Charlotte@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Moora, David <moora.david@epa.gov>
Cc: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>
Subject: GC Memos Collection Project (Due 4/27)

Hello All,

This email kicks off the GC Memos Collection Project. This is the same project that I sent an email about on April 5. At that time I asked for feedback on the draft tracking sheet. Thank you very much for your review and comments. We are now moving to Phase 2: ADDs work with their respective offices, and designated point of contact, to populate the tracking sheet with relevant guidance in each office. While we are ultimately interested in completing this project for the date range of 1993 – present, Matt would like to have the project completed for 2008 – 2017 by May 1. As such, **please submit the filled out tracking sheet for years 2008 – 2017 to Marcella & Derek by COB on Friday April 27**. This will give us a day to compile all responses for Matt. Direct all questions to Marcella & Derek.

Explanation of Project with Additional Details

One of Matt's priorities is to establish an inventory in the form of a spreadsheet of all legal guidance related to (1) environmental statutes and regulations and (2) internal OGC operations (delegations, policies, internal guidance for OGC

attorneys, hiring, personnel matters, etc.). This inventory is to include all formal memos, guidance documents, directives, opinions, or other similar official documents issued from either the General Counsel, or the Office of General Counsel. This is not an exact science. This project will require some discretion because there is not a standard naming convention, or a standard format, for these documents in this date range. We are looking for “formal” or “official” documents similar to what we already have on the OGC intranet page. Some nonexclusive signs to look for are letterhead, date stamps, and pen signatures. The document definitely does not need to have these things to be included. For the environmental statutes, we are typically looking for documents that have been shared with the public / published somewhere. Memos on internal OGC management are not typically shared outside of the Agency. We do expect to collect some memos signed by Associates in OGC, or issued by Associates without any actual signature. I don’t think that we will collect any documents issued by OGC staff attorneys. We do not want emails. In addition, this inventory will include recommendations on what, if anything, to do with each document.

Summary Guidelines

- The task is to locate, collect, document, categorize, and assess all legal guidance, per the parameters above.
- This should be comprehensive. **When in doubt, include the document**, but remember the parameters above.
- While we realize that some of this information already exists in repositories such as the OGC intranet, the E-Library within Lotus Notes, and in hard copy in the law library on the 1st floor, we are asking that this data be populated on the spreadsheet.
- Please collect and/or create digital copies to be posted on the OGC intranet page.
 - o We will rely on each law office to provide a PDF version of each document listed in their tracking chart.
- Please note whether the document is still “live” and recommend to the GC if revision or recession is advised. Should OGC revise, revoke, or maintain the document, and why?
 - o “Live” in this context means that the document is helpful to OGC practice, controlling, or binding in any way, to any extent, on EPA or OGC. Put another way, to be “live” means that the document is still good law. In some instances, GC memos specifically revoke other GC memos. In other instances, a GC memo may have been overridden by a court decision, the statute or regs may have changed, or circumstances make it irrelevant or obsolete now. There are many reasons that an old document may be “dead” or “bad law.” Further, it may be possible for only a portion of the document to be “live.” Please note this information in the relevant column of the spreadsheet.

Please direct all questions to Marcella & Derek. Thanks!

Derek Mills

Special Assistant, Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3341

Message

From: Hill, Kevin W. [hill.kevinw@epa.gov]
Sent: 2/25/2019 9:31:59 PM
To: OGC NFO [OGC-NFO@epa.gov]
Subject: RE: FOIA Resources

All,

If you could please provide me with your feedback by noon tomorrow, that would be great. Thanks!

Regards,
Kevin

Kevin W. Hill
Attorney-Adviser
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Office: 202-564-1652
hill.kevinw@epa.gov

From: Hill, Kevin W.
Sent: Monday, February 25, 2019 7:40 AM
To: OGC NFO <OGC-NFO@epa.gov>
Subject: FOIA Resources

All,

I am putting together a collection of FOIA resources for a program office's Contracting Officer Representative. The resources will be forwarded to contractors specifically working on a FOIA processing project. Please have a look at the index of resources below.

If you believe I have missed any guidance documents, please send me a copy or link. Thank you in advance for your time.

Index of EPA FOIA Resources

- A. Freedom of Information Act – U.S. Code § 552 (2017)
- B. EPA FOIA Regulations - 40 C.F.R. § Part 2 (2016)
- C. EPA FOIA Policy and Procedures Update (February 15, 2019)
- D. EPA FOIA Policy (Sept. 30, 2014)
- E. EPA FOIA Procedures (Sept. 30, 2014)
- F. EPA FOIA Toolkit (Sept. 14, 2017)
- G. EPA FOIA Toolkit Appendix
- H. EPA OGC Guidance Memo: Overview of Changes to the FOIA Resulting from the FOIA Improvement Act of 2016 (Sept. 20, 2016)
- I. EPA Proprietary Business Information (PBI) Case Tracking Standard Operating Procedures (Dec 18, 2017)
- J. EPA OGC GLO ILPG FOIA Exemptions Tip Sheet
- K. EPA OGC Guidance Memo: FOIA Exemptions: Most Frequently Applied
- L. EPA OGC FOIA Procedures (March 31, 2015)
- M. EPA FOIA Awareness Notification Process (Chief of Staff Efficiency Memo (Nov. 16, 2018)

- N. EPA Awareness Notification e-mail template Final (Nov. 27, 2018)
- O. EPA Records Guidance: Quick Reference Guide How to Save Text Messages

Other FOIA Resources

- P. DOJ OIP Guidance- The Importance of Quality Requester Services: Roles and Responsibilities of FOIA Requester Service Centers and FOIA Public Liaisons (June 12, 2018)
- Q. DOJ OIP Guidance - Limitations on Use of "Still-Interested" Inquiries (July 20, 2015)
- R. NARA OGIS Advisory Opinion - Agency Communications with Requesters (July 18, 2018)

Index of EPA FOIA Web Resources

- 1. EPA FOIA Website, located at: <https://www.epa.gov/foia>
- 2. EPA FOIA Intranet Site, located at: <http://intranet.epa.gov/foia/index.html>
- 3. EPA Approved templates, located at: <http://intranet.epa.gov/foia/FOIA-letters.html>

Other FOIA Web Resources

- 4. Department of Justice, Guide to the FOIA, located at: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>
- 5. Department of Justice, Office of Information Policy (OIP) Guidance, located at: <https://www.justice.gov/oip/oip-guidance>
- 6. National Archives and Records Administration (NARA) Office of Government Information Services (OGIS) Advisory Opinions, located at: <https://www.archives.gov/ogis/advisory-opinions>

Regards,

Kevin

Kevin W. Hill
Attorney-Adviser
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Office: 202-564-1652
hill.kevinw@epa.gov

Message

From: Creech, Christopher [Creech.Christopher@epa.gov]
Sent: 10/25/2018 5:16:09 PM
To: Epp, Timothy [Epp.Timothy@epa.gov]
CC: Walker, Denise [Walker.Denise@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: Draft Memo Policy and Procedures Update
Attachments: DRAFT MEMO Policy and Procedure Update 10.25.2018 tre ctc.docx

Hi Tim,

Changes accepted and made some cosmetic changes.

Christopher T. Creech
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E

From: Epp, Timothy
Sent: Thursday, October 25, 2018 9:54 AM
To: Creech, Christopher <Creech.Christopher@epa.gov>
Cc: Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
Subject: RE: Draft Memo Policy and Procedures Update

Chris – let me know what you think of the attached – sorry for the heavy rewrite.

Tim

Timothy R. Epp
Acting Director, National FOIA Office
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-2830

From: Creech, Christopher
Sent: Wednesday, October 24, 2018 6:56 PM
To: Epp, Timothy <Epp.Timothy@epa.gov>
Cc: Walker, Denise <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
Subject: RE: Draft Memo Policy and Procedures Update

Hello Tim,

Policy and Procedure Update with your comments reflected.

Thanks,

Christopher T. Creech

Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E

From: Creech, Christopher
Sent: Tuesday, October 23, 2018 12:54 PM
To: Epp, Timothy <Epp.Timothy@epa.gov>
Cc: Denise Walker (Walker.Denise@epa.gov) <Walker.Denise@epa.gov>; Gottesman, Larry <Gottesman.Larry@epa.gov>
Subject: RE: Draft Memo Policy and Procedures Update

Hello Tim,

Attached is the latest draft of the Policy and Procedure. Per our discussion, I am working on a recommendation for how to proceed with receiving internal comment and promulgating the Memorandum.

Best,

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Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E

From: Epp, Timothy
Sent: Thursday, October 18, 2018 4:44 PM
To: Creech, Christopher <Creech.Christopher@epa.gov>
Cc: Walker, Denise <Walker.Denise@epa.gov>
Subject: RE: Draft Memo Policy and Procedures Update

Thanks, Chris,

I should have also asked you to check in with Larry Gottesman for his views – do you think you can do that before Tuesday?

Thanks,
Tim

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Acting Director, National FOIA Office
Office of General Counsel
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From: Creech, Christopher
Sent: Thursday, October 18, 2018 3:10 PM

To: Epp, Timothy <Epp.Timothy@epa.gov>
Cc: Walker, Denise <Walker.Denise@epa.gov>
Subject: Draft Memo Policy and Procedures Update

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Office of General Counsel
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(202) 564-4286
Room 7353 E
Creech.Christopher@EPA.gov



Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 10/25/2018 1:53:47 PM
To: Creech, Christopher [Creech.Christopher@epa.gov]
CC: Walker, Denise [Walker.Denise@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: Draft Memo Policy and Procedures Update
Attachments: DRAFT MEMO Policy and Procedure Update 10.25.2018 tre.docx

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Sent: 10/23/2018 4:54:10 PM
To: Epp, Timothy [Epp.Timothy@epa.gov]
CC: Walker, Denise [Walker.Denise@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: Draft Memo Policy and Procedures Update
Attachments: DRAFT MEMO Policy and Procedure Update 10.23.2018.docx

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Best,

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Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
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Office of General Counsel
U.S. Environmental Protection Agency
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Christopher T. Creech
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4286
Room 7353 E
Creech.Christopher@EPA.gov



Message

From: Schumacher, Wendy [schumacher.wendy@epa.gov]
Sent: 9/18/2019 5:03:30 PM
To: Moumbleaux, Joan [moumbleaux.joan@epa.gov]; Gottesman, Larry [Gottesman.Larry@epa.gov]
Subject: RE: 2018 and 2019 Main Topic Covered in the FOIA Mandatory Training ?
Attachments: FOIA training slides 2018 v6 - 08-04-2017.pptx

Joan,

You've got the FY19 script from our meeting in August. Here is a late version of the FY18 training.

FY19 was a general overview and FY18 focused on several exemptions.

Hope this helps!

Wendy

Wendy Schumacher, Ph.D., PMP

Government Information Specialist | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310 A)
Washington, D.C. 20460 | WJCN 5315 E
Phone (202) 566-2513 | schumacher.wendy@epa.gov

From: Moumbleaux, Joan <moumbleaux.joan@epa.gov>
Sent: Wednesday, September 18, 2019 11:03 AM
To: Gottesman, Larry <Gottesman.Larry@epa.gov>; Schumacher, Wendy <schumacher.wendy@epa.gov>
Subject: 2018 and 2019 Main Topic Covered in the FOIA Mandatory Training ?

Hi Larry and Wendy,

Tim would like to know the focus of the 2018 and 2019 training slides.

Thanks for letting me know.

Joan Moumbleaux

Lead Government Information Specialist | [National FOIA Office](#)
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC2310A)
Washington, D.C. 20460 | WJCN 7426L
Phone (202) 564-7872 | Cell (202) 573-1835 | moumbleaux.joan@epa.gov



National FOIA Office
EPA Office of General Counsel

EPA's Freedom of Information Act Training (FY 2018)

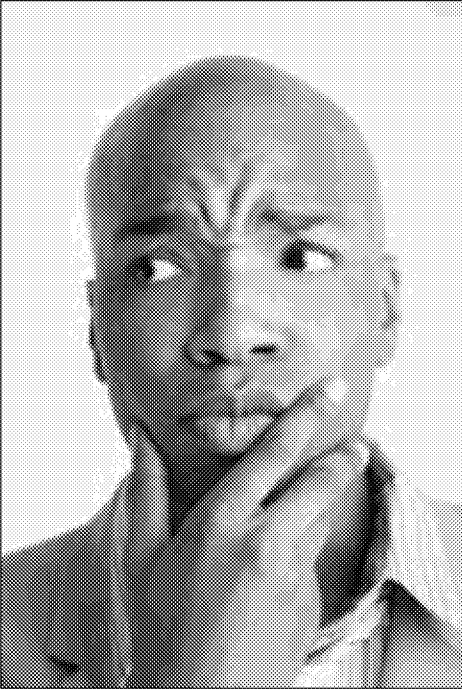
ONLINE TRAINING



OVERVIEW

EPA's FY 2018 Freedom of Information Act (FOIA) Training will provide the following:

- A refresher on the FY 2017 FOIA training
 - What is the FOIA
 - Records
- Information about FOIA Exemptions
- FOIA points of contact



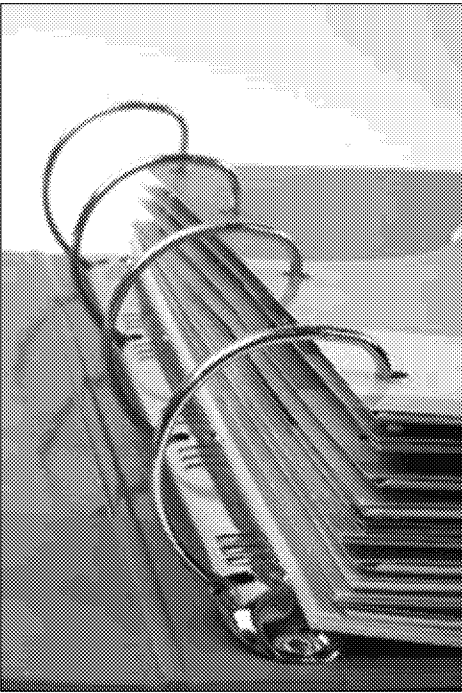
What is the Freedom of Information Act?

- The FOIA is a law that gives any person, including non-U.S. citizens, the right to access information from over 100 federal agencies. Click [here](#) to read the statutory language of the FOIA, signed in 1966.
- The public's right to access federal government records is enforceable by law.
- The FOIA only applies to:
 - Executive Branch agencies
 - Agency records
- Agency staff are not required to answer questions posed as a FOIA request.
- Other guidance is available from the Department of Justice (DOJ), Office of Information Policy at <https://www.justice.gov/oip/oip-guidance>.

<https://www.justice.gov/oip/freedom-information-act-5-usc-552>

<https://www.justice.gov/oip/foia-resources#s3>

<https://www.justice.gov/oip/court-decisions-overview>

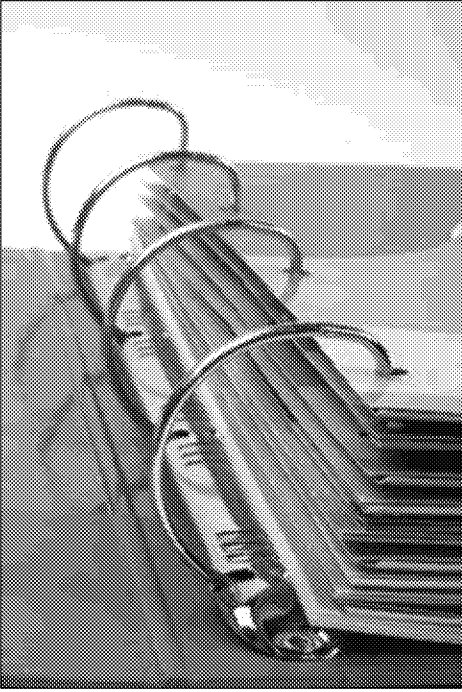


EPA's FOIA Policy and Procedures

- EPA's National FOIA Program provides the overarching FOIA policy, procedures and guidance for the Agency as a whole.
 - Click [here](#) to become familiar with EPA's FOIA Policy.
 - Click [here](#) to read EPA's enterprise-wide FOIA Procedures.
- EPA has a decentralized process for responding to FOIA requests. Each program and regional office establishes the specific steps that it will follow when processing a FOIA request.
- For additional guidance on your office's specific FOIA procedures, you may contact your Headquarters FOIA Coordinator or regional FOIA Officer. A list of contacts is available on the FOIA intranet site at <http://intranet.epa.gov/foia/>.

<https://www.epa.gov/irmpoli8/freedom-information-act-foia-policy>

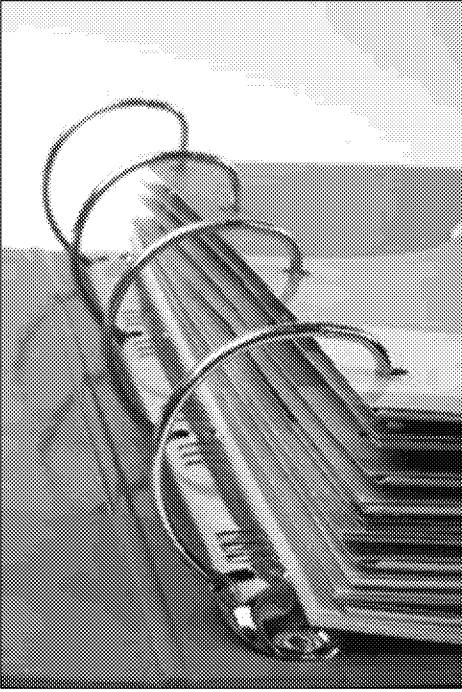
<https://www.epa.gov/irmpoli8/procedures-responding-freedom-information-act-foia-requests>



EPA Policy and Procedures – Role of the Headquarters or Regional FOIA Office

- The FOIA process officially begins when a FOIA request is received by an Agency FOIA office (currently the National FOIA Program or any EPA regional office).
- The steps involved in processing a FOIA request are outlined in EPA's Agency-wide FOIA Procedures. The National FOIA Office steps generally include the following:
 - Receive, review, and acknowledge incoming requests
 - Determine if the request is in the correct FOIA office
 - Determine the fee category
 - Issues determinations on fee-waiver (FW) and expedited processing (EP) requests
 - Assign the request to the Action Office (Some regional offices have centralized processes where the steps may differ slightly.)
- EPA uses an online system known as FOIAonline to receive, process and respond to FOIA requests from the public. FOIAonline is managed by EPA and provided as a shared federal service to both EPA and other agencies. It can be viewed at <https://foiaonline.regulations.gov/foia/action/public/home>.

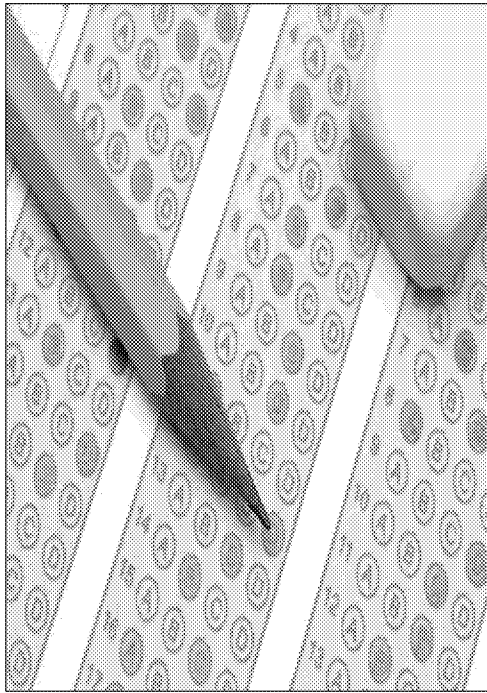
<https://www.epa.gov/irmpoli8/procedures-responding-freedom-information-act-foia-requests>



EPA Policy and Procedures – Role of the Action Office

Once an EPA office is assigned responsibility for responding to a FOIA request, it generally takes the following steps:

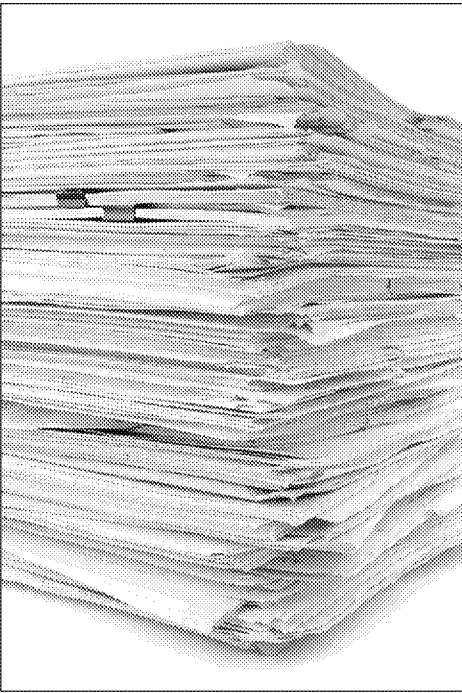
- Review the request to make sure that staff can identify records that the requester seeks.
- Determine the search parameters and determine whether additional responsive records may be in other Agency organizations
- Estimate the processing fees, if applicable
- Determine the response time (20 working days and 10 additional working days if “unusual circumstances” exist)
- Submit a search/collection request to the Office of Environmental Information’s (OEI’s) Discovery Services, as appropriate, when Outlook email records are needed
- Collect and review the records within the scope of the request
- Determine which records (or portions) may be withheld and prepare the response letter
- Finalize the processing fees and obtain approval from an authorized official to release or withhold records
- Respond to the request in FOIAonline and finalize the action by ensuring that all supporting documentation is entered into FOIAonline.



Knowledge Check #1

1. Agency-wide FOIA procedures are available on the Internet. Each Headquarters program office or regional office also has a set of procedures for processing FOIA requests.
 - a) True*
 - b) False
2. Whose records can be obtained through a FOIA request:
 - a) Executive Branch*
 - b) Judicial Branch
 - c) Legislative Branch
 - d) All of the above

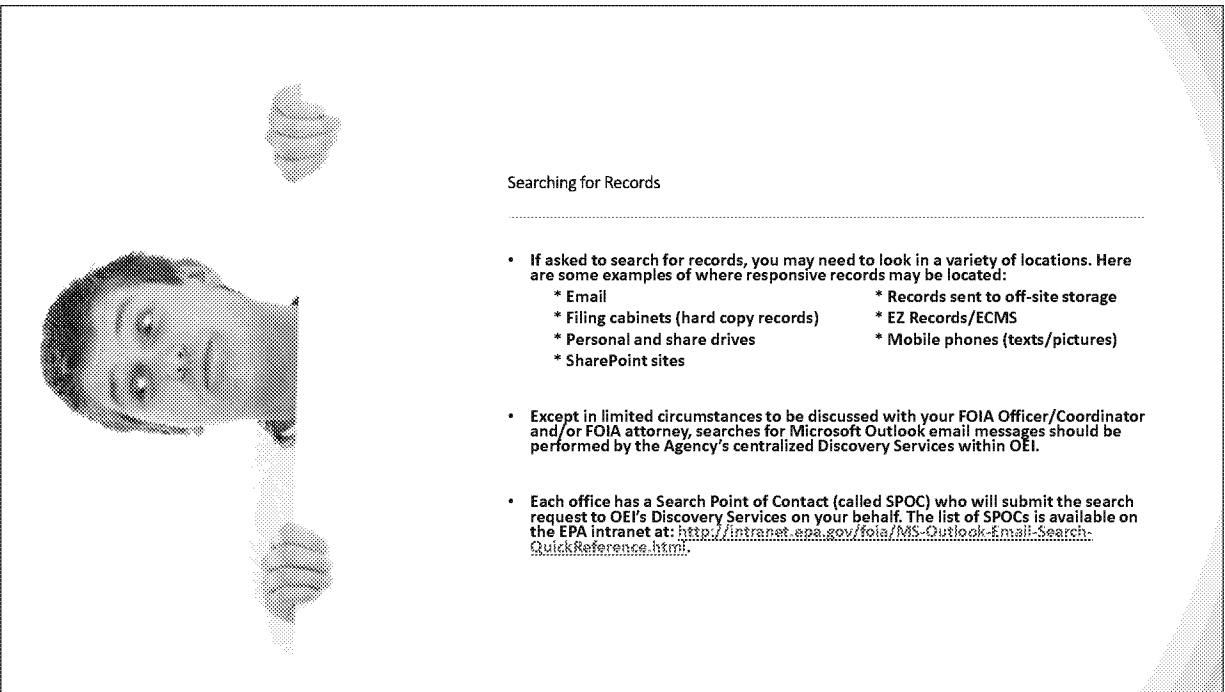
https://www.youtube.com/watch?v=IL2rsznuH_Y



What is a record under FOIA?

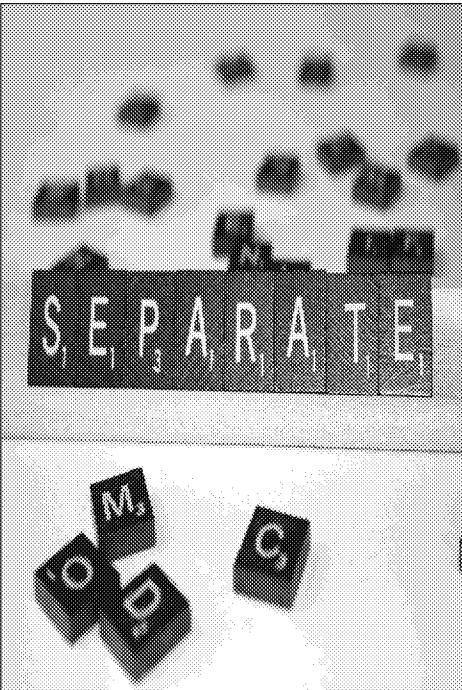
- Under FOIA, a record is information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, the term "records" includes *all* tangible documentations of information regardless of whether they are records under the Federal Records Act, 44 U.S.C. § 3301.
- The definition of records under FOIA is broader than the definition used by the EPA National Records Management Program.
- Agency employees responding to a FOIA request must keep records in accordance with EPA Records Schedules. FOIAonline is used to store records collected to respond to FOIA requests.

https://www.epa.gov/sites/production/files/2017-02/documents/20170210_epa_records_schedules_in_final_status.pdf



Searching for Records

- If asked to search for records, you may need to look in a variety of locations. Here are some examples of where responsive records may be located:
 - * Email
 - * Filing cabinets (hard copy records)
 - * Personal and share drives
 - * SharePoint sites
 - * Records sent to off-site storage
 - * EZ Records/ECMS
 - * Mobile phones (texts/pictures)
- Except in limited circumstances to be discussed with your FOIA Officer/Coordinator and/or FOIA attorney, searches for Microsoft Outlook email messages should be performed by the Agency's centralized Discovery Services within OEI.
- Each office has a Search Point of Contact (called SPOC) who will submit the search request to OEI's Discovery Services on your behalf. The list of SPOCs is available on the EPA intranet at: <http://intranet.epa.gov/foia/MS-Outlook-Email-Search-QuickReference.html>.



After Locating Records

- Segregate *releasable information in a responsive record from exempt information*.
- Exempt information is when the Agency withholds information under one or more of the nine FOIA exemptions which will be discussed later in this training.
- A document should be released in part if any of the information is releasable. Exceptions do apply. Use redaction software or tape to hide the information that must be protected pursuant to a FOIA exemption.
- Non-responsive information within an otherwise responsive record should be released, unless it qualifies under an exemption and can be redacted.



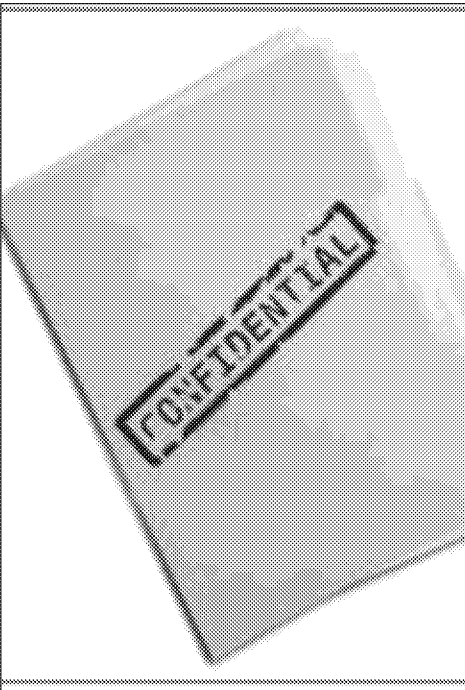
Foreseeable Harm Standard

- Under the FOIA Improvement Act of 2016, it is only possible to withhold information when:
 - an exemption applies and there is a foreseeable harm of release *or*
 - the information cannot be released by law.



What is in a response letter?

- **Items in the response letter**
 - Brief description of the withheld records
 - List of one or more exemptions applied
 - Appeal rights
 - Contact information for the EPA Public Liaison and NARA's Office of Government Information Services
- **Sample letters are available on EPA's FOIA intranet site at <http://intranet.epa.gov/foia/foia-letters.html>.**

A grayscale image of a document or folder with a prominent 'CONFIDENTIAL' stamp in a rectangular box. The stamp is tilted slightly to the right.

FOIA Exemptions

- Like all agencies subject to the FOIA, EPA applies a presumption of openness when responding to FOIA requests.
- Under FOIA, any requester may obtain access to federal agency records *unless* such records or portions of such records are protected from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute.
- When the Agency withholds information, the records must fall under at least one of nine exemptions. Click [here](https://www.epa.gov/foia/learn-about-foia#exemptions) or see the next slide for the list of all nine exemptions.
- This training will cover exemptions commonly used at EPA: 4, 5, 6, 7(c), and 9.

(hyperlink: <https://www.epa.gov/foia/learn-about-foia#exemptions>)



FOIA Exemption List – Used at EPA

The nine FOIA exemptions include the following:

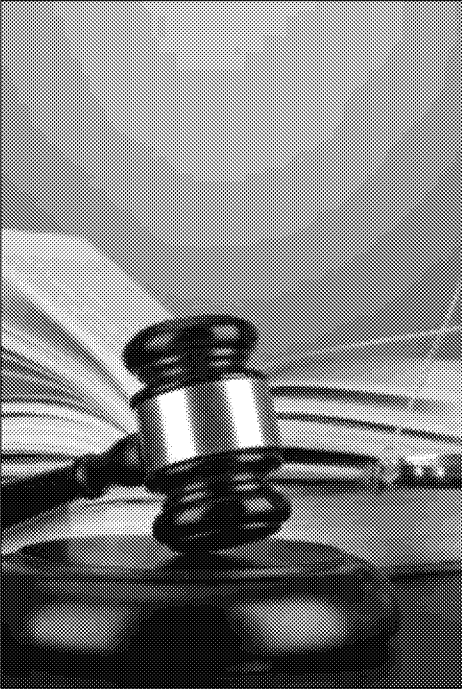
1. Classified national defense and foreign relations information
2. Internal agency rules and practices
3. Information that is prohibited from disclosure by another federal law
4. Trade secrets and other confidential business information
5. Inter-agency or intra-agency communications that are protected by legal privileges
6. Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information)
7. Information compiled for law enforcement purposes
8. Information relating to the supervision of financial institutions
9. Geological information on wells



Exemption 4

- Under Exemption 4 of the Freedom of Information Act (FOIA), agencies can withhold two types of information depending on the circumstances:
 - *Trade secret* information (a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort when there is a direct relationship between the information at issue and the productive process); or
 - *Information* that is related to business or trade, serving a commercial function, or of a commercial nature.
 - This includes information obtained from a person (essentially any individual or entity outside the federal government) and that is privileged or confidential.
 - If the submitter voluntarily provided commercial or financial information, it will be considered confidential if it is the kind of information that the submitter would not customarily release to the public.
 - If the government required the submitter to provide the information, it will be considered confidential if EPA staff determine that disclosure is likely to either 1) impair the government's ability to obtain necessary information in the future or 2) cause substantial harm to the competitive position of the submitter.

(hyperlink: <https://www.epa.gov/foia/learn-about-foia#exemptions>)



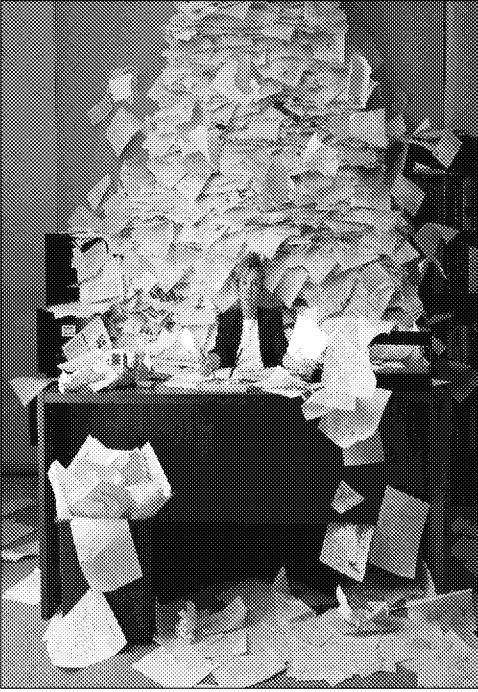
Exemption 5

- Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. § 552(b)(5).
- Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation including
 - deliberative process,
 - attorney work-product,
 - attorney-client, and
 - commercial information privileges.



Exemption 5 - Deliberative Process Privilege

- The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters.
- The objectives of this privilege are to
 - Allow staff to feel free to provide the decision maker with their uninhibited opinions and recommendations;
 - Protect against premature disclosure of proposed policies; and
 - Protect against confusing the issues and misleading the public.
- When a record is at least 25 years old, it is no longer protected under the deliberative process privilege.



Exemption 5 – Attorney Work Product

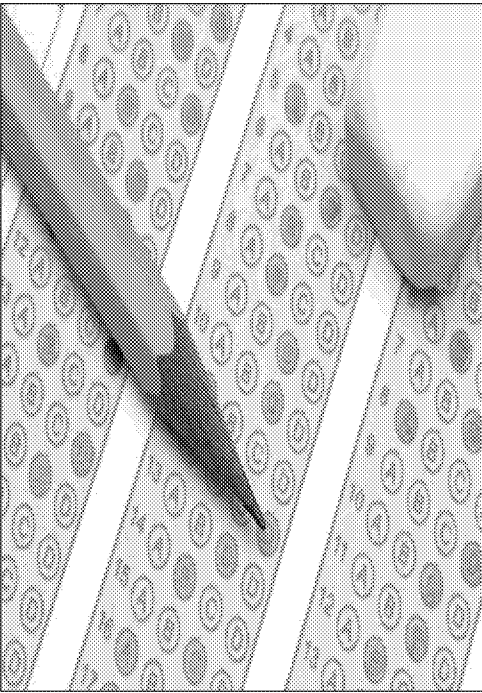
- The attorney work product privilege protects from disclosure any materials prepared by or for a party or its representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) in reasonable anticipation of litigation or for trial.
- The privilege extends to administrative proceedings (e.g., matters before an Administrative Law Judge) as well as to judicial proceedings (i.e., matters before a court).



Exemption 5 – Attorney-Client Privilege

- The attorney-client privilege protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice.
- This privilege is not limited to the context of litigation.
- It most commonly applies to confidential facts divulged by a client to his/her attorney, and it includes
 - *opinions* given by an attorney to his/her client based upon, and reflecting, those facts or
 - *communications* between attorneys that reflect confidential information from EPA staff.

<https://www.epa.gov/foia/learn-about-foia#exemptions>



Knowledge Check #2

1. There are _____ FOIA Exemptions.
 - a) Five
 - b) Nine*
 - c) Twelve
2. Does the attorney-client privilege apply to both administrative and judicial proceedings?
 - a) True*
 - b) False



Exemption 6

- Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).
- The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual.
- When determining whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, Agency offices must use a balancing test to determine whether the harm to personal privacy outweighs the benefit of releasing the information to the public.

POLICE REPORT

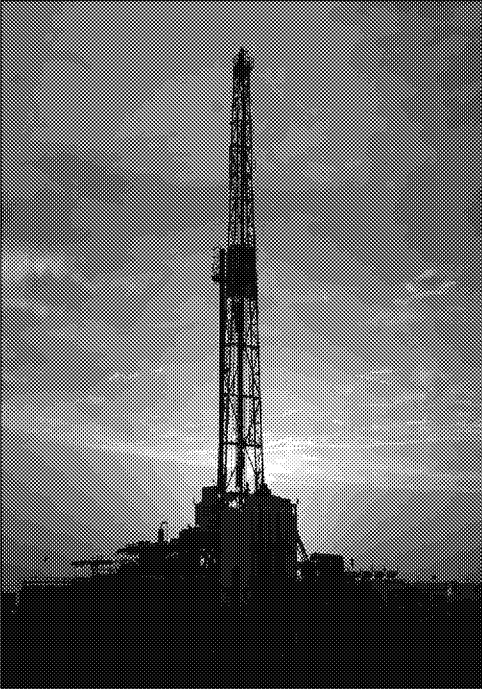
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ಆದ್ದರಿಂದ ಈಗಾಗಲೇ ಇರುವ ಸ್ಥಿತಿಗತಿಗಳಲ್ಲಿ ಇಂತಹ ಉದ್ದೇಶಗಳನ್ನು ಈಡೇರಿಸುವುದು ಅಸಾಧ್ಯವೆಂದು ತಿಳಿದುಬಂದಿದೆ. ಆದ್ದರಿಂದ ಈಗಾಗಲೇ ಇರುವ ಸ್ಥಿತಿಗತಿಗಳಲ್ಲಿ ಇಂತಹ ಉದ್ದೇಶಗಳನ್ನು ಈಡೇರಿಸುವುದು ಅಸಾಧ್ಯವೆಂದು ತಿಳಿದುಬಂದಿದೆ. ಆದ್ದರಿಂದ ಈಗಾಗಲೇ ಇರುವ ಸ್ಥಿತಿಗತಿಗಳಲ್ಲಿ ಇಂತಹ ಉದ್ದೇಶಗಳನ್ನು ಈಡೇರಿಸುವುದು ಅಸಾಧ್ಯವೆಂದು ತಿಳಿದುಬಂದಿದೆ.

[illegible][illegible]

- Exemption 7 is regularly applied to withhold references to individuals in law enforcement files when the information
 - identifies individuals referenced in law enforcement records *and*
 - the release of this information would not shed light on an agency's performance of its statutory duties.



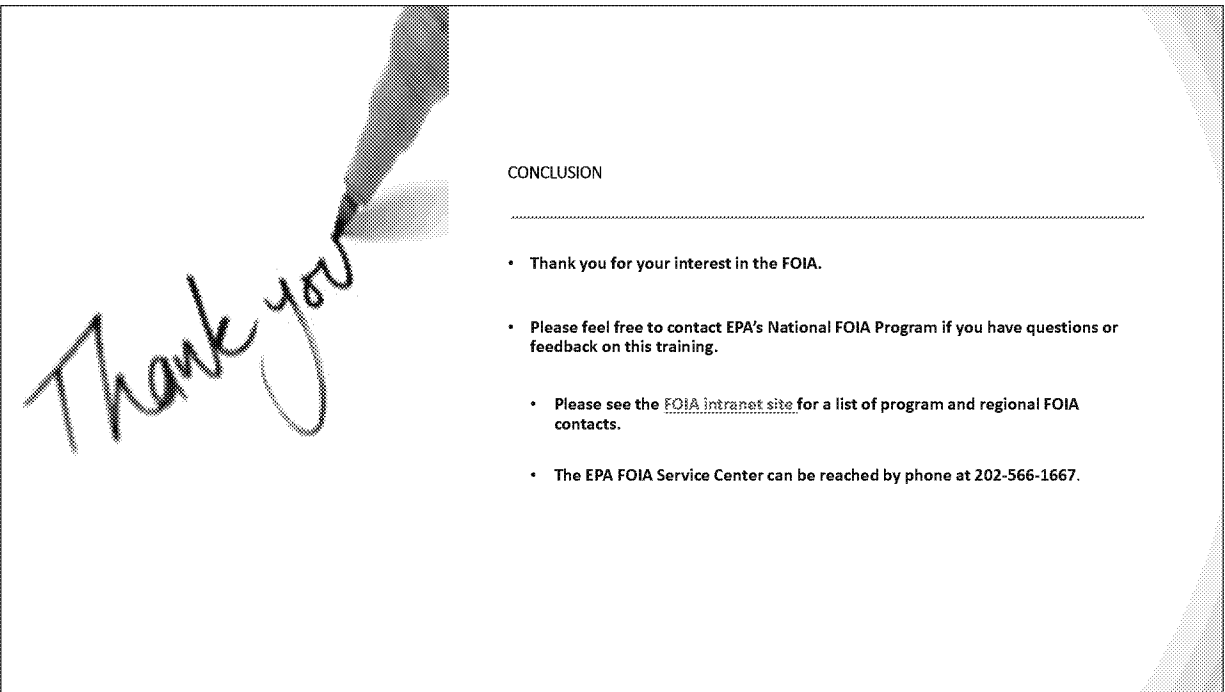
Exemption 9

- Exemption 9 covers “geological and geophysical information and data including maps, concerning wells.” 5 U.S.C. § 552(b)(9)
- Exemption 9 is rarely used by EPA, so please consult with the National FOIA Program or the Office of General/Regional Counsel about potentially using this exemption before responding to the requester.



Coordinating Multi-Office Responses

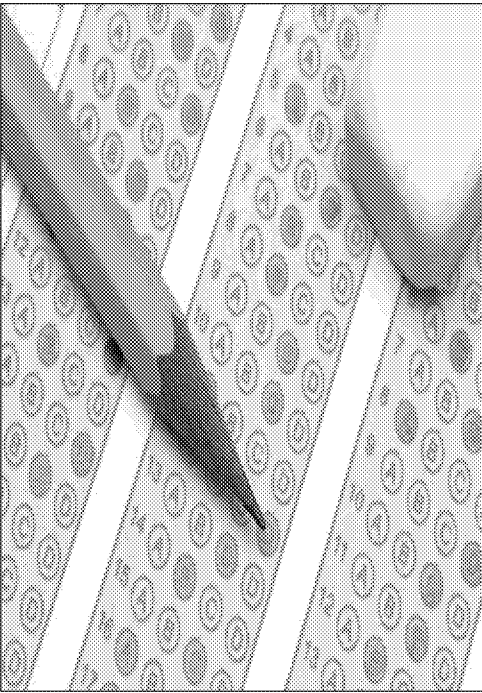
- EPA's FOIA Procedures state that there is a "Lead Office" to coordinate the search for responsive records and to develop a response. The National FOIA Program will assign the Lead Office for each FOIA submitted to the National FOIA Program.
- Contributing Office(s) that would like to withhold information under an exemption must:
 - inform the Lead Office about the information that must be withheld and provide the relevant exemption(s) *and*
 - notify the Lead Office to issue an interim response, if appropriate.



CONCLUSION

- Thank you for your interest in the FOIA.
- Please feel free to contact EPA's National FOIA Program if you have questions or feedback on this training.
- Please see the FOIA intranet site for a list of program and regional FOIA contacts.
- The EPA FOIA Service Center can be reached by phone at 202-566-1667.

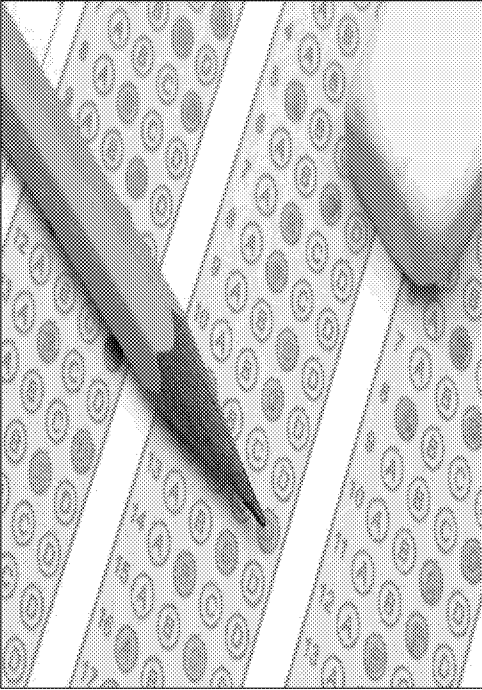
(Hyperlink: <http://intranet.epa.gov/foia/>)



TEST

1. The response letter must contain:
 - a) Appeal rights
 - b) List of exemptions for adverse determinations
 - c) Brief description of the withheld records
 - d) All of the above*

2. Under the FOIA Improvement Act of 2016, it is possible to withhold information when:
 - a) An exemption applies and there is foreseeable harm of release
 - b) The information cannot be released under another law
 - c) When a FOIA exemption(s) applies
 - d) a and b*



TEST

1. Which exemption allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"?
 - a) Exemption 2
 - b) Exemption 4
 - c) Exemption 6*
 - d) Exemption 12
2. Trade Secrets are protected under the FOIA:
 - a) True
 - b) False
 - c) Depends on the particular circumstances*
3. The Deliberative Process Privilege (Exemption 5):
 - a) Allows staff to feel free to provide the decision maker with his/her uninhibited opinions and recommendations
 - b) Protects against premature disclosure of proposed policies
 - c) Protects against confusing the issues and misleading the public
 - d) All of the above*